The Continuation of Doar Summary to the Impeachment Inquiry

Special to The New York Times

WASHINGTON, July 22—Following is the text of the 17 final sections of the "Summary of Information" presented to the House Judiciary Committee last Friday by its special counsel, John M. Doar. The text of the first seven sections appeared in The Times Monday. News articles relating to the summary, as well as to proposed articles of impeachment, also submitted to the committee last Friday, appeared in The Times on Saturday and Sunday. The Times plans to publish on Wednesday a comprehensive statement in President Nixon's defense. This statement, which was issued on Saturday, was the subject of a news article in The Times on Sunday. The summary issued by Mr. Doar and the statement in defense of Mr. Nixon will thus have appeared in The Times in order of their release.

Deception and Concealment

I

In order for the cover-up to be successful, those who were responsible for the Watergate burglary and other activities of a similar nature had to remain silent. This was the purpose of the payments and assurances of clemency. At the same time, those seeking to ascertain the facts, and to determine whether there was any truth to charges alleging White House responsibility for Watergate, had to be either discouraged or deceived.

II

In order to achieve the second objective, President Nixon himself chose, upon occasion, to assure the public that his aides were not involved with payments or assurances of clemency. The President made public statements on these matters which were false and misleading. The President also assured the public, upon occasion, that he had ordered, and even personally undertaken, thorough investigations into Watergate, that those investigations found no White House involvment, and that further investigation would therefore be unnecessary. The President asserted in public statements that thorough investigations were reflected in three separate reports by his immediate staff—the August, 1972, Dean report; the post-March, 1973, Dean report, and the Ehrlichman report of April, 1973—and that such reports concluded that the White House staff had been involved in Watergate.

A. The August, 1972, Dean Report

On Aug. 29, 1972, at a news conference, President Nixon noted that investigations into Watergate were being conducted by the Department of Justice and F.B.I., G.A.O. and the Banking and Currency Committee. He went on to say:

"In addition to that, within our own staff, under my direction, counsel to the President, Mr. Dean, has conducted a complete investigation of all leads which might involve any present members of the White House staff or anybody in the government. I can say categorically that his investigation indicates that no one in the White House Staff, no one in this Administration, presently employed, was involved in this very bizarre incident."

This assurance was repeated on other occasions.

At the time of President Nixon's Aug. 29, 1972, press conference, Dean had not made a report directly to the President. According to the President's own logs, throughout the entire summer Dean and the President never met prior to Sept. 15, 1972. Dean has testified that he first heard of this "report" in the President's press conference, and no independent evidence exists that such a report was ever completed or undertaken.

The first meeting between the President and Dean occurred about two and a half weeks after the Aug. 29, 1972, press conference, on Sept. 15, 1972. The conversation at that meeting discloses that the President knew of Dean's role in implementing the President's policy of containment. Before Dean entered the room, Haldeman told the President it had been a good move ". . . bringing Dean in," that Dean, while he does not gain for you himself, he enables other people to grain ground "while he's making sure that you don't fall through the holes." After Dean joined the meeting, the President referred to the Watergate matter as "a can of worms," said that "a lot of this stuff went on," and congratulated Dean for "putting your fingers in the dikes every time that leaks sprung here and sprung there." Later in the canversation, the President said, "So you just try to button it up as well as you can and hope for the best. And . . . remember that basically the damn thing is just on of these unfortunate things, and we're trying to cut our losses."

The transcript of the March 21, 1973, morning meeting between the President and Dean also indicates that, in the summer of 1972, Dean was helping with the cover-up, not conducting a "complete investigation."

DEAN: . . . Now, [sighs] what, has happened post-June 17? Well, it was, I was under pretty clear constructions [laughs] not to really investigate this, that this was something that just could have been disastrous on the election if it had—all hellhad broken loose, and I worked on a theory of containment—

PRESIDENT: Sure

DEAN: To try to hold right where it was.

PRESIDENT: Right.

At the end of the March 21, 1973, morning meeting the President told Dean that there was no doubt about "the right plan before election," that Dean "handled it just right," and that Dean had "contained it."

On April 17, 1973, the President denied, in the course of a discussion with Haldeman and Ehrlichman, that Dean during the summer of 1972 did not report to the President directly. When Ehrlichman said Dean would say that he reported primarily to the President and to Ehrlichman only incidentally, the President said:

"You see the problem you've got there is that Dean does have a point there which you've got to realize. He didn't see me when he came out to California. He didn't see me until the day you said, 'I think you ought to talk to John Dean.' I think that was in March."

The President continued, "One of the reasons this staff is so damn good. Of course he didn't report to me. I was a little busy, and all of you said, 'Let's let Dean handle that and keep him out of the President's office." Later in the same conversation, the subject came up again.

H: Didn't you at some point get a report from Dean that nobody in the White House was involved.

E: Didn't we put that out way back in August?

P: I mean, I just said "Well, that's all I know now." It was never in writing. He never came in orally and told me Dean—John Dean I never saw about this matter. You better check, but I don't think John Dean was ever seen about this matter until I saw him, when John Ehrlichman suggested that I'd better see John Dean.

E. You better check Bob, back in that period of time July—when we were in San Clemente—my recollection is that he did come and see you at that time—but we can check that.

P: Oh—by himself? No.

E: Well, by himself or with one of us. I don't know.

P: He may have come in, but it was a pretty—I hope he did, hope he did. But he might have come in sort of the end, and someone said, "Look here's John Dean from Washington," and I may have said, "Thanks for all your hard work."

B. The March, 1973, Dean Report

On Aug. 15, 1973, the President said: "On March 23, I sent Mr. Dean to Camp David, where he was instructed to write a complete report on all he knew of the entire Watergate matter."

The "report" that the President had in fact requested Dean to make in March 1973 was one that was designed to mislead investigators and insulate the President from charges of concealment in the event the cover-up began to come apart. When the President and Dean discussed a report in a March 20, 1973, telephone conversation, the President told Dean to "make it very incomplete."

P: Right. Fine. The other thing I was going to say just is this—just for your own thinking—I still want to see, though I guess you and Oick are still working on your letter and all that sort of thing?

D: We are and we are coming to—the more we work on it the more questions we see—

P: That you don't want to answer, huh?

D: that bring problems by answering.

P: And so you are coming up, then, with the idea of just a stonewall then? Is that—

D: That's right.

P: Is that what you come down

with?

D: Stonewall, with lots of noises that we are always willing to cooperate, but no one is asking us for anything.

P: And they never will, huh? There is no way that you could make even a general statement that I could put out? You understand what I—

D: I think we could.

P: See, for example, I was even thinking if you could even talk to Cabinet, the leaders, you know, just orally and say, "I have looked into this, and this is that," so that people get sort of a feeling that—your own people have got to be reassured.

* * *

P: But you could say, "I have this and this is that." Fine. See what I am getting at is that, if apart from a statement to the [Ervin] committee or anything else, if you could just make a statement to me that we can use. You know, for internal purposes and to answer questions, etc.

D: As we did when you, back in August, made the statement that—

P: That's right.

D: And all the things—

P: You've got to have something where it doesn't appear that I am doing this in, you know, just in a—saying to hell with the Congress and to hell with the people, we are not going to tell you anything because of executive privilege. That, they don't understand. But if you say, "No, we are willing to cooperate," and you've made a complete statement, but make it very incomplete. See, that is what I mean. I don't want a, too much in chapter and verse as you did in your letter, I just want just a general—

D: An all around statement.

P: That's right. Try just something general. Like "I have checked into this matter; I can categorically, based on my investigation, the following: Haldeman is not involved in this, that and the other thing. Mr. Colson did not do this, Mr. So-and-So did not do this. Mr. Blank did not do this. Right down the line, taking the most glaring things. If there are any further questions, please let me know. See?

D: Uh, huh. I think we can do that.

On the afternoon of March 21, 1973, after Dean had discussed with the President White House involvement in the cover-up, the President repeated his instructions to Dean:

DEAN: . . . Uh, if you as the White House counsel, John, uh, on direction —uh, I ask for a, a written report, which I think, uh, that—which is very general, understand. Understand, [laughs] I don't want to get all that Goddamned specific. I'm thinking now in far more general terms, having in mind the fact that the problem with a specific report is that, uh, this proves this one and that one that one, and you just prove something that you didn't do at all. But if you make it rather general in terms of my—your investigation indicates that this man did not do it, this man did not do it, this man did do that. . . .

During this conversation, Ehrlichman pointed out to the President the advantage of having a conclusory report.

"Well, but doesn't it give, doesn't it permit the President to clean it out at such time as it does come up? By saying, 'Indeed, I relied on it. And now this, this later thing turns up, and I don't condone that. And if I'd known about that before, obviously, I wouldn't have done it. And I'm going to move on it now.'"

On March 22, 1973, Ehrlichman repeated the point at a meeting attended by the President, Haldeman, Dean and Mitchell:

"[A] ssuming that some corner of this thing comes unstuck at some time, you're then in a position to say, 'Look, that document I published [Dean Report] is the document I relied on.' . . . ."

On March 22, 1973, there was also a discussion about using the report if White House aides were called to testify:

PRESIDENT: Suppose the judge tomorrow, uh, orders the committee to show, show its evidence to the grand jury [unintelligible] then the grand jury reopens the case and questions everybody. Does that change the game plan?

DEAN: [Unintelligible] send them all down.

PRESIDENT: What? Before the committee?

MITCHELL: The President's asked [unintelligible] this.

DEAN: Now are you saying—

PRESIDENT: Suppose the judge opens—tells the grand jury and says, "I, I don't," says, "I want them to call Haldeman, Ehrlichman and everybody else they didn't call before." What do you say to that? Then do you still go on this pattern with the Ervin committee? The point, is, if, if a grand jury, uh, decides to go into this thing, uh, what do you think on that point?

EHRLICHMAN: I think you'd say, "Based on what I know about this case, uh, I can see no reason why I should be concerned about what the grand jury process—"

PRESIDENT: All right.

EHRLICHMAN: That's all.

HALDEMAN: And that would change—

PRESIDENT: Well, they go in—do both: Appear before the grand jury and the committee?

DEAN: Sure.

EHRLICHMAN: You have to bottom your defense, your position on the report.

PRESIDENT: That's right.

EHRLICHMAN: And the report says, "Nobody was involved."

C. THE EHRLICHMAN REPORT

At a press conference on Sept 5, 1973, the President said that when he realized that John Dean would not be able to complete his report at Camp David, he assigned John Ehrlichman to conduct a "thorough investigation" to get all the facts out:

"The investigation, up to that time, had been conducted by Mr. Dean. . . . When he was unable to write a report, I turned to Mr. Ehrlichman. Mr. Ehrlichman did talk to the Attorney General . . . on . . . . I think it was the 27th of March. The Attorney General was quite aware of that and Mr. Ehrlichman, in addition, questioned all of the major figures involved and reported to me on the 14th of April, and then, at my suggestion—direction, turned over his report to the Attorney General on the 15th of April. An investigation was conducted in the most thorough way."

The President's statement about a White House report on Watergate was, in this case, too, misleading. The "report" Ehrlichman had been asked to prepare in April, 1973, was one designed to mislead the investigators, insulate the President from the appearance of complicity and explain the President's failure to take action on Dean's disclosure of March 21, 1973. The President also intended to use the "report" to get public personal credit for the disclosures that were on the verge of being made through other agencies, in spite of White House attempts to cover them up.

In mid-April, 1973, the President had reason to fear these disclosures. Magruder and Dean were meeting with the prosecutors. The President met with Haldeman and Ehrlichman at 8:55 A.M. on April 14, 1973. Ehrlichman told the President that Colson had reported that Hunt would testify because there was no longer any point in remaining silent and that Hunt's testimony would lead to the indictment of Mitchell and Magruder. The President decided that, as Colson had advised, their best course would be to pressure John Mitchell into accepting the blame for Watergate. If Mitchell could not be persuaded voluntarily to accept the blame, then the White House could "make a record" of its efforts for the purpose of showing that the White House had been actively engaged in trying to get out the truth about Watergate. Ehrlichman suggested that the President could put pressure on Mitchell by telling him that the Ehrlichman report showed Mitchell's guilt.

E: Let's take it just as far as you call Mitchell to the oval office as, a —

P: No.

E: I'm essentially convinced that Mitchell will understand this thing.

P: Right.

E: And that if he goes in, it redounds to the Administration's advantage. If he doesn't then we're —

P: How does it redound to our advantage?

E: That you have a report from me based on three weeks' work; that when you got it, you immediately acted to call Mitchell in as the provable wrong-doer, and you say, "My God, I've got a report here. And it's clear from this report that you are guilty as hell. Now John, for [expletive deleted] sake go on in there and do what you should. And let's get this thing cleared up and get it off the country's back and move on." And —

H: Plus the other side of this is that that's the only way to beat it now.

At 2:24 P.M. that same day the President met with Haldeman and Ehrlichman where they again discussed what the Ehrlichman report should be.

E: You say [unintelligible] I have investigated. [Unintelligible] up the whole.

P: What — what I, basically, is having an Ehrlichman report. We've got some of the Dean report. That would be simply we have an Ehrlichman report that he makes and here is the situation with regard to the White House involvement. I haven't gone into the committee thing.

E: Now the current [unintelligible] the current [unintelligible] on White House involvement primarily are Haldeman's [unintelligible].

P: That's right.

E: Well, I didn't go into White House involvement. I assumed that —

P: No. I [unintelligible].

E: That what you needed to know from me, and this would be what I would say, "What the President needed to know was the truth or falsity of charges that were leaking out with regard to — Committee for the Re-election personnel and any connections to the White House that might exist. That was the area of inquiry rather than whether anybody in the White House was involved."

P: [Unintelligible] trying to get you out there in a way that you didn't have to go into all that stuff, you see.

Two days later, on the morning of April 16, 1973, and after the President had learned the substance of Dean's disclosure to the prosecutors, the President directed Ehrlichman to create "a scenario with regard to the President's role. . . ." "Otherwise," Ehrlichman said, "the Justice Department will, of course, crack this whole thing."

Ehrlichman returned for another meeting with the President and Haldeman at 10:50 A.M. During the meeting the President asked, "How has the scenario worked out? May I ask you?" This conversation followed:

E: Well, it works out very good. You became aware sometime ago that

this thing did not parse out the way it was supposed to and that there were some discrepancies between what you had been told by Dean in the report that there was nobody in the White House involved, which may still be true.

P: Incidentally, I don't think it will gain us anything by dumping on the Dean report as such.

E: No.

P: What I mean is I would say I was not satisfied that the Dean report was complete and also I thought it was my obligation to go beyond that to people other than the White House.

E: Ron has an interesting point. Remember you had John Dean go to Camp David to write it up. He came down and said, "I can't."

P: Right.

E: That is the tipoff and right then you started to move.

P: That's right. He said he could not write it.

H: Then you realized that there was more to this than you had been led to believe. [Unintelligible].

P: How do I get credit for getting Magruder to the stand?

E: Well it is very simple. You took Dean off of the case right then.

H: Two weeks ago, the end of March.

P: That's right.

E: The end of March. Remember that letter you signed to me?

P: Uh, huh.

E: 30th of March.

P: I signed it. Yes.

E: Yes sir, and it says Dean is off of it. I want you to get into it. Find out what the facts are. Be prepared to—

P: Why did I take Dean off? Because he was involved? I did it, really, because he was involved with Gray.

E: Well there was a lot of stuff breaking in the papers, but at the same time—

H: The scenario is that he told you he couldn't write a report so obviously you had to take him off.

P: Right, right.

E: And so then we started digging into it and we went to San Clemente. While I was out there I talked to a lot of people on the telephone, talked to several witnesses in person, kept feeding information to you and as soon as you saw the dimensions in this thing from the reports you were getting from the staff—who were getting into it—Moore, me, Garment and others.

P: You brought Len Garment in.

E: You began to move.

P: I want the dates of all those—

E: I've got those.

P: Go ahead. And then—

E: And then it culminated last week.

P: Right.

E: In your decision that Mitchell should be brought down here; Magruder should be brought in; Strachan should be brought in.

P: Shall I say that we brought them all in?

E: I don't think you can. I don't think you can.

H: I wouldn't name them by name. Just say I brought a group of people in.

E: Personally come to the White House.

P: I will not tell you who because I don't want to prejudice their rights before [unintelligible].

E: But you should say, "I heard enough that I was satisfied that it was time to precipitously move. I called the Attorney General over, in turn Petersen."

P: The Attorney General. Actually you made the call to him on Saturday.

E: Yes.

P: But this was after you heard about the Magruder strategy.

E: No, before.

P: Oh.

E: We didn't hear about that until about three o'clock that afternoon.

P: Why didn't you do it before? This is very good now, how does that happen?

E: Well—

P: Why wasn't he called in to tell him you had made a report, John?

H: That's right. John's report came out of the same place Magruder's report did—

P: No. My point is—

E: I called him to tell him that I had this information.

P: Yeah but, why was that? That was because we had heard Magruder was going to talk?

E: No. Oh, I will have to check my notes again.

H: We didn't know whether Magruder was going to talk.

E: That's right.

H: Magruder was still agonizing on what he was going to do.

P: Dean—but you remember you came in and said you have to tell him about it politely. Well, anyway—

H: I will tell you the reason for the hurry-up in the timing was that we learned that Hunt was going to testify on Monday afternoon.

E: The President is right. I didn't talk to Kleindienst. Remember, I couldn't get him.

P: Yeah.

E: I didn't talk to him until he got home from Burning Tree, which was the end of the day, and I had already talked to Magruder.

P: Right. But my point is when did we decide to talk tto Kleindienst? Before Magruder?

E: Oh, yes. Remember, early in the morning I said I will see these two fellows but I've got to turn this over to the Attorney General.

P: Which two fellows were you going to see?

E: Mitchell and Magruder.

P: With what your conclusions were?

E: I had this report and I tried all day long to get the Attorney General who was at the golf course and got him as soon as he got home for—

P: Do we want to put this report out sometime?

E: I am not sure you do, as such.

P: I would say it was just a written report.

E: The thing that I have—

P: The thing they will ask is what have you got here?

H: It was not a formal report. It was a set of notes.

P: Handwritten notes?

E: Yeah. There are seven pages, or eight pages. Plus all my notes of my interviews.

Ehrlichman later denied that he had conducted an investigation. He said he had made an inquiry consisting of an interview with Paul O'Brien on April 5, 1973; with Kalmbach on April 6, 1973, with Dean on April 8, 1973; with Strachan on April 12, 1973; with Colson on April 13, 1973; with Mitchell and Magruder on April 14, 1973; and with Strachan on April 14, 1973. The meeting with O'Brien was requested by O'Brien; the meeting with Kalmbach took place in a parking lot; the edited transcript of the Ehrlichman April 8, 1973, report to the President about his meeting with Dean shows that the meeting involved a discussion of strategy; the meeting with Strachan concerning his grand jury testimony of the day before and Strachan's concern that he had committed perjury; the edited transcript of Ehrlichman's April 14, 1973, report to the President about his meeting with Colson shows that the meeting involved a discussion of strategy; the transcript of Ehrlichman's conversation with Mitchell on April 14, 1973, shows that Ehrlichman did not seek to elicit facts; the President instructed Ehrlichman on April 14, 1973, to meet with Magruder just "for making a record" after he was informed that Magruder was about to meet with the prosecutors; and Ehrlichman met with Strachan April 15, 1973, in response to the President's directions to tell Strachan what Magruder had told the prosecutors.

III

To sustain the cover-up, certain White House and C.R.P. officials made false and misleading statements under oath. These statements took various forms. In some instances witnesses told untrue stories. In others, witnesses untruthfully said they could not recall facts. The President told Dean on March 21, 1973, "Just be damned sure you say I don't...remember, I can't recall, I can't give any honest, an answer to that, that I can recall. But that's it."

There is no evidence that when the President learned of such conduct he condemned it, instructed that it be stopped, dismissed the person who made the false statement, or reported his discoveries to the appropriate authority (the Attorney General or the Director of the F.B.I.). On the contrary, the evidence before the committee is that the President condoned this conduct, approved it, directed it, rewarded it, and in some instances advised witnesses on how to impede the investigators.

White House and C.R.P. officials made false and misleading statements in two distinct time periods. The first time period covered from June, 1972, to March, 1973. During this period the cover-up was relatively successful—in part because of perjured testimony by Magruder and Porter and false statements of Strachan. The purpose of Magruder's untruthful testimony was to provide innocent explanations for the commitment of $250,000 of C.R.P. money to the Liddy plan. The purpose of Porter's untruthful testimony was to corroborate Magruder's story. The purpose of Strachan's false statements was to hide the involvement of the White House in the Liddy plan. The second time period began at the time of the reconvening of the Watergate Grand Jury near the end of March 1973.

FIRST TIME PERIOD: STATEMENTS TO FURTHER THE COVER-UP

1. STRACHAN

Strachan was Haldeman's liaison with the President's re-election campaign organizations. He could link Haldeman, even before public disclosures about the break-in, with the approval and implementation of the Liddy plan. As early as March 13, 1973, Dean informed the President that Strachan's denial was false and that Strachan planned to stonewall again in the future.

DEAN: Well, Chapin didn't know anything about the Watergate, and—

PRESIDENT: You don't think so?

DEAN: No. Absolutely not.

PRESIDENT: Did Strachan?

DEAN: Yes.

PRESIDENT: He knew?

DEAN: Yes.

PRESIDENT: About the Watergate?

DEAN: Yes.

PRESIDENT: Well, then, Bob knew. He probably told Bob, then. He may not have. He may not have.

DEAN: He was, he was judicious in what he, in what he relayed, and, uh, but Strachan is as tough as nails. I—

PRESIDENT: What'll he say? Just go in and say he didn't know?

DEAN: He'll go in and stonewall it and say, "I don't know anything about what you are talking about." He has already done it twice, as you know, in interviews.

PRESIDENT: Yeah. I guess he should, shouldn't he, in the interests of—Why? I suppose we can't call that justice, can we? We can't call it [unintelligible].

DEAN: Well, it, it—

PRESIDENT: The point is, how do you justify that?

DEAN: It's a, it's a personal loyalty with him. He doesn't want it any other way. He didn't have to be told. He didn't have to be asked. It just is something that he found is the way he wanted to handle the situation.

PRESIDENT: But he knew? He knew about Watergate? Strachan did?

DEAN: Uh huh.

PRESIDENT: I'll be damned. Well, that's the problem in Bob's case, isn't it. It's not Chapin then, but Strachan. 'Cause Strachan worked for him.

DEAN: Uh huh. They would have one hell of a time proving that Strachan had knowledge of it, though.

PRESIDENT: Who knew better? Magruder?

DEAN: Well, Magruder and Liddy.

PRESIDENT: Ahh—I see. The other weak link for Bob is Magruder, too. He having hired him and so forth.

2. MAGRUDER AND PORTER

An explanation was required for C.R.P.'s payment of money to Liddy as part of Haldeman's and Mitchell's commitment of $250,000 for a C.R.P. intelligence plan. Magruder fabricated a story that the Liddy plan contemplated only legitimate intelligence activities. Magruder's untruthful testimony was supported by that of his assistant, Porter, both before the grand jury in September and at the trial of the Watergate defendants in January. Whether the President knew of Magruder's perjury before March 21, 1973, there is no doubt that the President was informed on that date, during his morning meeting with Dean, of perjury by both Magruder and Porter.

PRESIDENT: Liddy told you he was planning—where'd he learn there was such a plan—from whom?

DEAN: Beg your pardon?

PRESIDENT: Where did he learn of the plans to bug Larry O'Brien's suite?

DEAN: From Magruder, after the, long after the fact.

PRESIDENT: Oh, Magruder, he knows.

DEAN: Yeah. Magruder is totally knowledgeable on the whole thing.

PRESIDENT: Yeah.

DEAN: All right, now, we've gone through the trial. We've—I don't know if Mitchell has perjured himself in the grand jury or not. I've never—

PRESIDENT: Who?

DEAN: Mitchell. I don't know how much knowledge he actually had. I know that Magruder has perjured himself in the grand jury. I know that Porter has perjured himself, uh, in the grand jury.

PRESIDENT: Porter [unintelligible]

DEAN: He is one of Magruder's deputies.

PRESIDENT: Yeah.

DEAN: Uh, that they set up this scenario which they ran by me. They said, "How about this?" I said, "I don't know. I, you know, if, if this is what you are going to hang on, fine." Uh, that they—

PRESIDENT: What did they say before the grand jury?

DEAN: They said, they said, as they said before the trial and the grand jury, that, that, uh, Liddy had come over as, as a counsel—

PRESIDENT: Yeah.

DEAN: —and we knew he had these capacities to—

PRESIDENT: Yeah.

DEAN: —you know—

PRESIDENT: Yeah.

DEAN: —to do legitimate intelligence. We had no idea what he was doing.

PRESIDENT: Yeah.

DEAN: He was given an authorization of $250,000—

PRESIDENT: Right.

DEAN: —to collect information, because our surrogates were out on the road. They had no protection. We had information that there were going to be demonstrations against them, that, uh, uh, we had to have a plan to get information as to what liabilities they were going to be confronted with—

PRESIDENT: Right.

DEAN: —and Liddy was charged with doing this. We had no knowledge that he was going to bug the D.N.C. Uh—

PRESIDENT: Well, the point is, that's not true.

DEAN: That's right.

PRESIDENT: Magruder did know that—

DEAN: Magruder specifically instructed him to go back in the D.N.C.

PRESIDENT: He did?

DEAN: Yes.

PRESIDENT: You know that? Yeah. I see. Okay.

According to Magruder, before testifying at the trial in January, 1973, he informed Haldeman that he would commit perjury. After the trial, Magruder met with Haldeman to discuss his future employment in the Administration. On Feb. 19, 1973, Dean prepared a talking paper for a meeting at which Haldeman would discuss with the President Magruder's possible appointment to a new Administration job. In this talking paper, Dean noted that Hugh Sloan, whom Magruder had importuned to commit perjury, would testify against Magruder before the Senate if Magruder were appointed to any position for which Senate confirmation is required. The talking paper reads:

"(3) What to do with Magruder
—Jeb wants to return to White House (Bicentennial project)
—May be vulnerable (Sloan) until Senate hearings are complete
—Jeb personally is prepared to withstand confirmation hearings"

In spite of a White House policy

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against employing any person implicated in the Watergate matter, Haldeman, after the meeting with the President, offered Magruder the highest paying available position which did not require Senate confirmation: a $36,000 per year job in the Department of Commerce. Magruder retained that position for a month after Dean discussed with the President, on March 21, 1973, the fact that Magruder had committed perjury.

B. SECOND TIME PERIOD: STATEMENTS TO COVER UP THE COVER-UP.

Starting in late March, 1973, the President received reports from his assistants that the cover-up was threatened from four different sources. First and foremost was Hunt, whose threats were discussed with the President on March 21, 1973. Hunt's immediate demand for money could be taken care of and money for the long term could be obtained. But there was also Hunt's expectation of clemency which the President realized was politically impossible. Second, there was McCord's letter to Judge Sirica and the decision to reconvene the grand jury. Third, there were the dangers posed by threatened disclosures by key subordinates in the Watergate cover-up. The President showed concern when Dean and Magruder started to talk to the prosecutors in mid-April. Fourth, on April 14, 1973, there was a fear discussed by the President, Haldeman and Ehrlichman that Hunt had changed his mind, and that he would talk to the prosecutors about the payments and the clemency offers.

There is clear and convincing evidence that the President took over in late March the active management of the cover-up. He not only knew of the untruthful testimony of his aides—knowledge that he did not disclose to the investigators—but he issued direct instructions for his agents to give false and misleading testimony. The President understood that his agents had been and continued to coach witnesses on how to testify so as to protect the cover-up; and the President himself began to coach witnesses.

1. MAGRUDER

McCord's accusations suggested that higher C.R.P. officials were involved in the break-in. The President, Haldeman, and Ehrlichman developed a strategy to have Magruder admit that his previous testimony were perjured and that he, in fact, knew that the Liddy plan included illegal surveillance. This testimony would implicate Mitchell as well as Magruder but would insulate the other aides of the President. It would in effect force Mitchell to come forward and admit responsibility for Watergate. The President and his advisors reasoned that Magruder might be willing to make these disclosures in exchange for a promise of immunity from the prosecutors. At the March 27, 1973, meeting between the President, Haldeman and Ehrlichman the following discussion took place:

H: Let's go another one. So you persuade Magruder that his present approach is (a) not true; I think you can probably persuade him of that; and (b) not desirable to take. So he then says, in despair, "Heck, what do I do? Here's McCord out here accusing me." McCord has flatly accused me of perjury — He's flatly accused Dean of complicity." Dean is going to go, and Magruder knows of the fact that Dean wasn't involved, so he knows that when Dean goes down, Dean can testify as an honest man.

P: Is Dean going to finger Magruder?

H: No sir.

P: There's the other point.

H: Dean will not finger Magruder but Dean can't either—likewise he can't defend Magruder.

P: Well —

H: Dean won't consider [unintelligible] Magruder. But Magruder then says, "Look, if Dean goes down to the grand jury and clears himself, with no evidence against him except McCord's statement, which won't hold up, and it isn't true. Now, I go down to the grand jury, because obviously they are going to call me back, and I go to defend myself against McCord's statement which I know is true. Now I have a little tougher problem than Dean has. You're saying to me, 'Don't make up a new lie to cover the old lie.' What would you recommend that I do? Stay with the old lie and hope I would come out, or clean myself up and go to jail?"

P: What would you advise him to do?

H: I would advise him to go down and clean it up.

P: And say I lied?

H: I would advise him to seek immunity and do it.

P: Do you think he can get immunity?

H: Absolutely.

P: Then what would he say?

E: He would say, "I thought I was

helping. It is obvious that there is no profit in this route. I did it on my own motive. Nobody asked me to do it. I just did it because I thought it was the best thing to do. Everybody stands on it. I was wrong to do it." That's basically it.

H: Magruder's viewpoint that to be ruined that way which isn't really being ruined is infinitely preferable to going to jail. Going to jail for Jeb will be a very, very, very difficult job.

E: [unintelligible] he says he is a very unusual person. The question now is whether the U. S. Attorney will grant immunity under the circumstances.

H: Well he would if he thought he was going to get Mitchell.

E: Yeah, that's right.

H: The interesting thing would be to watch Mitchell's face at the time I recommend to Magruder that he go in and ask for immunity and confess.

In mid-April, 1973 Magruder began speaking to the prosecutors. On March 21, 1973, the President had expressed uncertainty about whether he could count on Magruder. He voiced a similar uncertainty on April 14 when Ehrlichman described Magruder as an "emotional fellow" who was ready to break. On April 13, 1973, Haldeman's principal assistant, Larry Higby, called Magruder and confronted him with reports that Magruder had implicated Haldeman and the President in the Watergate break-in.

Highby recorded the conversation. He told Magruder that it was not in his long- or short-range interest to blame the White House and said that he could not believe Magruder would do this to Bob, who "has brought you here." During the conversation, Magruder agreed that Strachan had not specifically told him that Haldeman wanted the Liddy plan approved. On the morning of April 14, 1973, Haldeman reported this conversation to the President. Haldeman said that Higby had handled it skillfully and that the recording made by Higby "beats the socks off" Magruder if he ever "gets off the reservation." The President instructed Ehrlichman to meet with Magruder. Later that day, Haldeman said Magruder should be asked to repeat what he told Higby and that Ehrlichman should say, "Good."

2. STRACHAN

If Magruder confessed, Strachan's previous untruthful testimony, which insulated Haldeman, would be in jeopardy. At an afternoon meeting between the President and Haldeman on April 14, 1973, they discussed what Strachan's strategy before the grand jury should be.

H: I don't think Magruder knows about the aftermath.

P: Where does he [Magruder] get to Gordon Strachan?

H: He says he gets Gordon on—

P: Sending material to him—

H: He still implies at least that Gordon know about it before you know—he knew everything they did. Larry tells me he did not.

P: He will testify that he sent materials to the White House?

H: If he is asked, he will, yes.

P: He'll be asked—is that something he will say he sent to the White House. What would Strachan say?

H: Strachan has no problem with that. He will say that after the fact there are materials that I can now surmise were what he is referring to but they were not at the time identified in any way as being the result of wiretaps and I did not know they were. They were amongst tons of stuff. Jeb makes the point. He said, I am sure Gordon never sent them to Bob because they were all trash. There was nothing in them. He said the tragedy of this whole thing is that it produced nothing.

P: Who else did he send reports to —Mitchell?

H: I don't know. The thing I got before was that he sent them either to—that one went to him and one went to Strachan.

P: What our problem there is if they claim that the reports came to the White House—basically to your office—what will you say then?

H: They can. This doesn't ever have to come out.

On the night of April 14, 1973, the President had a telephone conversation with Haldeman during which he told Haldeman that Ehrlichman should speak to Strachan and "put him through a little wringer." On the afternoon of April 16, 1973, the President was told by Ehrlichman that Strachan had acted as Dean suggested he would. Ehrlichman told the President that the prosecutors "really worked him over" but "despite considerable fencing, he refused to discuss the matter and was excused by the prosecutors."

3. HALDEMAN

On April 25 and 26, 1973, the President and Haldeman jointly reviewed, analyzed and discussed the contents of various taped Presidential conversations in February, March, and April of that year, with specific attention focused on the tape of the March 21 morning meeting between the President and Dean. On April 25 and 26, 1973, Haldeman, at the President's request, listened to the taped conversation of that meeting and made notes from the tape. From 4:40 to 5:35 P.M. on April 25, 1973, Haldeman met with the President and reported to him on the contents of the tape. The President decided Haldeman should listen to the tape again to determine answers to certain questions raised by the conversation.

On April 26, 1973, Haldeman listened to the tapes again and then met with the President for approximately five hours, commencing at 3:59 P.M. and concluding at 9:03 P.M.

Haldeman subsequently testified extensively before the Senate Select Committee of the substance of the President's morning meeting with Dean. The President later said that Haldeman's testimony was correct. The Watergate grand jury has indicted Haldeman on two counts of perjury for his testimony about the substance of the meeting of March 21, 1973 specifically citing the following statement:

"(a) That the President said, [T]here is no problem in raising a million dollars. We can do that, but it would be wrong.

"(b) That 'There was a reference to his [Dean's] feeling that Magruder had known about the Watergate planning and break-in ahead of it, in other words, that he was aware of what had gone on at Watergate. I don't believe that there was any reference to Magruder committing perjury.'"

4. EHRLICHMAN

On April 17, 1973, the President met with Haldeman and Ehrlichman and former Secretary of State Rogers. After a brief discussion of Haldeman's and Ehrlichman's future, the President evinced concern for his former personal attorney, Herbert Kalmbach, stating that it was "terribly important that poor Kalmbach get through this thing." The discussion then focused on Kalmbach's major area of vulnerability—his possible knowledge of how the money he raised was to be used. The President asked if Dean had called Kalmbach about fund-raising. Haldeman replied that Dean had. Ehrlichman said that Dean had told him that Dean told Kalmbach what the money was to be used for. The President suggested that Ehrlichman testify otherwise:

P: ... Incidentally, it is terribly important that poor Kalmbach get through this thing.

H: I think he is alright.

P: How could he learn? Did you talk to him there? Did Dean call him about the money?

H: Yes, sir.

P: Does he say what said?

E: Dean told me that he told him what it was for. I don't believe him. Herb said that he just followed instructions, that he just went ahead and did it and sent the money back and—

P: They said they need it for?

E: I don't even know if they told him what for. It was an emergency and they needed this money and I don't know whether he can get away with that or if it's more specific than that.

P: You can corroborate then Herb on that one.

E: I can if Dean is the accuser. I can.

P: If Dean is the accuser, you can say that he told you on such and such a date that he did not tell Herb Kalmbach what the money was for.

E: That he has told me—that he has told me—

P: That's right—that's right.

5. COLSON

On April 14, 1973, Ehrlichman reported to the President on a conversation with Magruder during which Magruder had described what he was telling the prosecutors. At this time, the President was concerned that Colson would be called before the grand jury. He also expressed interest in Colson's avoiding the commission of perjury. One way that this could have been done was to instruct Colson to tell all he knew and to testify truthfully. But rather than instruct Colson to testify truthfully, the President instructed Ehrlichman to warn Colson about what Magruder had told the prosecutors.

P: We'll see. We'll see. Do your other business, etc. John, too, I wonder if we shouldn't reconsider, if you shouldn't, I mean you have to consider this—rather than having Colson go in there completely blind, give him at least a touch up—or do you think that is too dangerous."

E: Say that again—I didn't quite hear it.

P: Colson—rather than just saying nothing to him, if it isn't just as well to say—look you should know that Magruder is going to testify, etc., or is that dangerous according to Kleindienst?

E: I'm not so sure. I have to call him anyway tomorrow. He has an urgent call in for me. Ah, I don't think I want to say anything at all to him about John. John, incidentally, I understand, was on C.B.S. News and just hardlined them.

P: Oh, I agree on John.

E: Yeah.

P: On Magruder that is what I meant.

E: Well, I can say something very brief. I don't need to indicate that he said anything to me.

P: Yeah, that you understand that he has talked. I mean, not to the grand jury but to—

E: Yeah, I think I could safely go that far.

P: And say that he should know that before he goes, and be prepared.

E: Friday—I will call him in the morning.

P: Let me put it this way: I do think we owe it to Chuck to at least—

E: Sure.

P: So that he doesn't, I mean, go in there and well frankly on a perjury rap—

E: I understand. I don't think he is in any danger on that but—

P: Why wouldn't he be in any danger, because he's got his story and knows pretty well what he is going to say?

E: Yeah, I think he is pretty pat, but I will talk to him in the morning and give him a cautionary note anyway.

The President's Contacts With the Department of Justice: March 21-April 30, 1973

I

During the meeting with Haldeman and Dean on the morning of March 21, 1973, the President decided that a new plan had to be developed, and asked Haldeman to get Mitchell down and meet with Ehrlichman and Dean to discuss a plan. The President said to Dean:

"All right. Fine. And, uh, my point is that, uh, we can, uh, you may well come—I think it is good, frankly, to consider these various options. And then, once you, once you decide on the plan — John — and you had the right plan, let me say, I have no doubts about the right plan before the election. And you handled it just right. You contained it. Now after the election we've got to have another plan, because we can't have, for four years, we can't have this thing—you're going to be eaten away. We can't do it."

On the night of March 21, 1973, the President dictated his recollection of the events of the day. The President said that Dean felt he was criminally liable for his action in "taking care of the defendants"; that Magruder would bring Haldeman down if he felt he himself was to go down; that if Hunt wasn't paid he would say things "that would be very detrimental to Colson and Ehrlichman"; that Mitchell had been present when Liddy presented his political intelligence proposal; that Colson, with Hunt and Liddy in his office, had called up Magruder and told him to "get off his ass and start doing something about, uh, setting up some kind of operation"; that Colson "pushed so hard that, uh, Liddy et al, following their natural inclinations, uh, went, uh, the extra step which got them into serious trouble"; that Ehrlichman sent "Hunt and his crew" out to check into Ellsberg's psychiatric problem; that Krogh was in "a straight position of perjury"; that Strachan "has been a real, uh, courageous fellow through all this" and that Strachan "certainly had knowledge of the informa— of the matter."

The President noted that there would be a meeting with Mitchell in the morning, and that he hoped out of it all would come "some sort of course of action we can follow." The President said it was too dangerous to "hunker down" without making any kind of a statement.

The following day, Mitchell came to Washington. The President, Mitchell, Haldeman, Ehrlichman and Dean met and discussed the various problems with regard to the complicity of White House and C.R.P. officials in the Watergate and cover-up, including Mitchell. The President told Mitchell:

PRESIDENT: Then he can go over there as soon [unintelligible] this. But, uh, the, uh, the one thing I don't want to do is to— Now let me make this clear. I, I, I thought it was, uh, very, uh, very cruel thing as it turned out—although at the time I had to tell [unintelligible]—what happened to Adams. I don't want it to happen with Watergate—the Watergate matter. I think he made a, made a mistake, but he shouldn't have been sacked, he shouldn't have been—And, uh, for that reason, I am perfectly willing to— I don't give a shit what happens. I want you all to stonewall it, let them plead the Fifth Amendment, cover-up or anything else, if it'll save it—save the plan. That's the whole point. On the other hand, uh, uh, I would prefer, as I said to you, that you do it the other way. And I would particularly prefer to do it that other way if it's going to come out that way anyway. And that my view, that, uh, with the number of jackass people that they've got that they can call, they're going to—The story they get out through leaks, charges, and so forth, and innuendos, will be a hell of a lot worse than the story they're going to get out by just letting it out there.

MITCHELL: Well—

PRESIDENT: I don't know. But that's, uh, you know, up to this point, the whole theory has been containment, as you know, John.

MITCHELL: Yeah.

PRESIDENT: And now, now we're shifting. As far as I'm concerned, actually from a personal standpoint, if you weren't making a personal sacrifice—it's unfair—Haldeman and Dean. That's what Eisenhower—that's all he cared about. He only cared about — Christ, "Be sure he was clean." Both in the fund thing and the Adams thing. But I don't look at it that way. And I just — That's the thing I am really concerned with. We're going to protect our people, if we can.

During the course of that meeting the President telephoned Attorney General Kleindienst. He called, not to disclose the information he had received as to the complicity of his associates in the Watergate and its cover-up, but to implement a decision to get Kleindienst working for the President's position with the S.S.C. [Senate Select Committee] through Senator Baker. He asked Kleindienst to be "our Baker handholder," to "babysit him, starting in like, like in about ten minutes."

On March 23, 1973, the President telephoned Acting F.B.I. Director Gray and told him that he knew the beating Gray was taking during his confirmation hearings and he believed it to be unfair. He reminded Gray that he had told him to conduct a "thorough and aggressive investigation." He did not tell Gray of the information he had received from Dean on March 21, 1973.

On March 26, 1973, the Watergate grand jury was reconvened; the seven original Watergate defendants were scheduled to be recalled to testify under grants of immunity.

On March 27, 1973 the day after the grand jury was reconvened, the President met with Haldeman, Ehrlichman, and Ziegler for two hours. The President directed Ehrlichman to tell Kleindienst that no White House personnel had prior knowledge of the break-in and that Mitchell wanted Kleindienst to report information from the grand jury to the White House.

E: I will see Kleindienst. That's settled—

P: You'll see Kleindienst? When?

E: This afternoon at three o'clock.

P: Three o'clock, and then I think, when—huh?

H: Should I also see Kleindienst? Should I, or should John be the only one?

P: John, you do it.

H: That's what Mitchell was asking. Mitchell is very distressed that Kleindienst isn't stepping up to his job as the contact with the committee, getting Baker programmed and all that (A), and (B) that he isn't getting—see Dean got turned off by the grand jury. Dean is not getting the information from Silbert on those things said at the grand jury. And Mitchell finds that absolutely incompetent and says it is Kleindienst's responsibility. He is supposed to be sending us—

P: Ask Kleindienst, John, put it on the basis that you're not asking nor in effect is the White House asking; that John Mitchell says you've got to have this information from the grand jury at this time and you owe it to him. Put it right on that basis, now, so that everybody can't then say the White House raised hell about this, because we are not raising hell. Kleindienst shouldn't—where are you going to see him, there or here?

E: In my office.

P: Have a session with him about how much you want to tell him about everything.

E: Ah—

P: I think you've got to say, "Look, Dick, let me tell you, Dean was not involved—had no prior knowledge—Haldeman had no prior knowledge; you, Ehrlichman, had none; and Colson had none. Now unless—all the papers writing about the President's men and if you have any information to the contrary you want to know. You've got to know it but you've got to say too that there is serious question here being raised about Mitchell. Right? That's about it isn't it?

Later in the meeting, the President said that Kleindienst was worried about furnishing "grand jury things" to the White House. The President suggested as an additional justification for such a request that Ehrlichman tell Kleindienst that Ehrlichman must receive grand jury information because the President wanted to know, in order to determine whether any White House people were involved: "Not to protect anybody, but to find out what the hell they are saying." The President then suggested that Ehrlichman request a daily flow of information: "What have you today? Get every day so that we can move one step ahead here. We want to move."

On the next day, Ehrlichman telephoned Kleindienst and executed the President's instructions. He relayed the President's assurance that there was no White House involvement in the break-in, but said that serious questions were being raised with regard to Mitchell.

Ehrlichman then told Kleindienst that the President wanted any evidence or inference from evidence about Mitchell's involvement passed on. When Ehrlichman relayed to Kleindienst what he termed the "best information that the President had, and has . . . ," he did not disclose any of the information the President had received on March 21 from Dean, nor was he instructed by the President to do so.

III

In the late afternoon on April 14, 1973, Ehrlichman reported to the President on the substance of Magruder's interview that day with the prosecutors. That evening, the President told Haldeman by telephone that prior to Strachan's appearance before the grand jury, Strachan should be informed of Magruder's revelations; the President also asked if Strachan were smart enough so as to testify in a way that did not indicate that he knew what Magruder had said. After his conversation with Haldeman, the President called Ehrlichman and suggested that beforet Colson spoke with the prosecutors, Colson should at least be aware that the prosecutors had already interviewed Magruder so that he could avoid making statements that might result in perjury charges.

At the time of this telephone conversation on April 14, 1973, the President, aware of the fact that Dean, like Magruder, was talking with the prosecutors, told Ehrlichman to attempt to persuade Dean to continue to play an active role in the formulation of White House strategy regarding Watergate. The President directed Ehrlichman to approach Dean in the following manner:

"Well, you start with the proposition, Dean, the President thinks you have carried a tremendous load, and his affection and loyalty to you is just undiminished. . . . And now, let's see where the hell we go. . . . We can't get the President involved in this. His people, that is one thing. We

don't want to cover up, but there are ways. And then he's got to say, for example? You start with him certainly on the business of obstruction of justice. . . . Look, John—we need a plan here. And so that LaRue, Mardian, and the others—I mean . . ."

Ehrlichman said that he was not sure that he could go that far with Dean, but the President responded, "No. He can make the plan up." Ehrlichman indicated that he would "sound it out." On the following afternoon, when Kleindienst reported to the President on the disclosures made by Dean and Magruder to the prosecutors, the President told Kleindienst that he had previously taken Dean off the matter.

III

A.

On April 15, 1973, the President met with Attorney General Kleindienst in the President's E.O.B. office from 1:12 to 2:22 P.M. Kleindienst reported to the President on the evidence then in the possession of the prosecutors against Mitchell, Dean, Haldeman, Ehrlichman, Magruder, Colson and others. Kleindienst has testified that the President appeared dumfounded and upset when he was told about the Watergate involvement of Administration officials. The President did not tell Kleindienst that he had previously been given this information by John Dean.

The President asked about the evidence against Haldeman and Ehrlichman and made notes on Kleindienst's reply. The President's notes on Kleindienst's reply include the following:

"E—(Conditional Statements)
Dean—
Deep Six documents
Get Hunt out of country
Haldeman—
Strachan—
will give testimony—H. had papers indicating Liddy was in eavsedropping.
($350,000—to LaRue.)
* * *
(What will La Rue say he got the 350 for?)
Gray—documents"

There was also a discussion of payments to the defendants and what motive had to be proved to establish criminal liability.

On April 15, 1973, Petersen and Kleindienst met with the President in the President's EOB office from 4:00 to 5:15 P.M. Petersen has testified that he reported on the information the prosecutors had received from Dean and Magruder and that his report included the following items: that Mitchell had approved the $300,000 budget for the Liddy "Gemstone" operation; that budget information for "Gemstone" and summaries of intercepted conversations were given to Strachan was for delivery to Haldeman; that if the prosecutors could develop Strachan as a witness, "school was going to be out as far as Haldeman was concerned"; that Ehrlichman, through Dean, had told Liddy that Hunt should leave the country; and that Ehrlichman had told Dean to "deep six" certain information recovered by Dean from Hunt's office.

Petersen has testifed that at this meeting the President did not disclose to him any of the factual information that Dean had discussed with the President on March 21, 1973.

After receiving this information on April 15, 1973, the President met twice with Haldeman and Ehrlichman in his EOB office that evening. At the later meeting, the President discussed with his closest associates at least one piece of information he had received from the Attorney General and Assistant Attorney General Petersen that afternoon. Ehrlichman testified that during their meeting the President requested that he telephone Patrick Gray and discuss with him the issue of documents taken from Hunt's White House safe and given by Dean to Gray in Ehrlichman's presence in June 1972. During the course of this meeting Ehrlichman did so.

IV

A.

On April 16, 1973, from 1:39 to 3:25 P.M. the President met with Henry Petersen. At this meeting, the President promised to treat as confidential any information disclosed by Petersen to the President. The President emphasized to Petersen that ". . . you're talking to me . . . and there's not going to be anybody else on the White House staff. In other words, I am acting counsel and everything else." The President suggested that the only exception might be Dick Moore. When Petersen expresed some reservation about information being disclosed to Moore, the President said, ". . . let's just . . . better keep it with me then."

At the meeting Petersen supplied the President with a memorandum which he had requested on April 15, 1973, summarizing the existing evidence that implicated Haldeman, Ehrlichman and Strachan. The memorandum included the following:

"*Ehrlichman*

(1) Ehrlichman in the period following the break-in told Dean to "deep-six" certain information recovered by Dean from Hunt's office.

(2) Ehrlichman through Dean informed Liddy that Hunt should leave the country, and this was corroborated by Hunt.

(3) Dean had indicated that he had given certain non-Watergate information from Hunt's office to Gray personally.

Haldeman

(4) Magruder had said that "Gemstone" budget information had been given to Strachan for delivery to Haldeman.

(5) Dean informed Haldeman of the Liddy Plan, but no instructions were issued that this surveillance program was to be discontinued.

(6) Magruder said he caused to be delivered to Strachan, for delivery to Haldeman, a summary of the intercepted conversations.

Strachan

(7) Strachan had been questioned about the allegations concerning Haldeman and had refused to discuss the matter."

The White House edited transcript shows that, in the same conversation, Petersen informed the President about the grand jury not believing Magruder's testimony in the summer of 1972; Gray's denial of receiving documents from Hunt's safe; the implication of Ehrlichman by his "deep six" statement; Strachan's pre-appearance interview and the nature of his prior grand jury testimony; and Ehrlichman's request to the C.I.A. for assistance to Hunt.

At this meeting, the President provided Petersen with information respecting Watergate. Early in the meeting, the President described to Petersen what actions he had taken almost a month earlier on the Watergate matter. In so reporting the resident gave Petersen the following characterization of the report he had assigned Dean to write in the days after March 21, 1973:

"—a month ago I got Dean in and said (inaudible) a report (inaudible) Camp David and write a report. The report was not frankly accurate. Well it was accurate but it was not full. And he tells me the reason it wasn't full was that he didn't know. Although it wasn't I'm told. But I am satisfied with it and I think I've read enough in the (inaudible) papers up here. So then I put Ehrlichman to work on it."

The House Judiciary Committee transcripts of the White House meetings on March 20, 21 and 22, 1973 show that Dean was assigned to draft a partial report as a part of the White House strategy to limit the investigations. The President did not tell Petersen that one reason Dean did not complete a full report was that his assignment was to write a partial report—one that would minimize the involvement of White House personnel in the Watergate matter.

Second, later in the April 16, 1973, meeting the President and Petersen discussed the possibility that if Strachan's and Dean's testimony established that Haldeman was informed of the Liddy plan after the second planning meeting, Haldeman might be considered responsible for the break-in for his alleged failure to issure an order to stop the surveillance operation. When Petersen told the President that the question of Haldeman's liability depended on who had authority to act with respect to budget proposals for the Liddy plan, the President said:

P: Haldeman (inaudible)
HP: He did not have any authority?
P: No sir . . . none, none—all Mitchell —campaign funds. He had no authority whatever. I wouldn't let him (inaudible).

The White House Political Matters Memoranda establishes that Haldeman did possess and exercise authority over the use of campaign funds.

The President ended the meeting by asking that Petersen keep him fully informed.

B.

At the opening of a meeting with Ehrlichman and Ziegler which began two minutes after Petersen's departure, the President informed Ehrlichman that Petersen had told him that Gray had denied ever personally receiving documents from Hunt's safe. The President and Ehrlichman then discussed Ehrlichman's recollections of the facts related to this incident. He also told Ehrlichman that he had discussed with Petersen the June 19, 1972, incidents in which Ehrlichman was alleged to have issued instructions to Hunt to leave the country and to Dean to "deep-six" certain materials.

The President next reported to Ehrlichman that Petersen had told him that Magruder had not yet gotten a

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deal, and that Dean and his lawyers were threatening to try the Administration and the President if Dean did not get immunity. Finally, the President relayed to Ehrlichman Petersen's views about Haldeman's vulnerability with respect to criminal liability.

On the following day, Ehrlichman took steps to gather information about the events the President had informed him Dean had been discussing with the prosecutors. He telephoned Ken Clawson and questioned him about the events of the meeting on June 19, 1972; Clawson responded that "If you want me to be forthwith and straightforward with you, I'll recollect anything that you want."

Ehrlichman then recited Dean's allegations. Clawson told Ehrlichman that he did not recall the deep-six instruction or the instruction for Hunt to leave the country.

Also on April 17, 1973, Ehrlichman telephoned Colson. He relayed to him the information that Dean had not been given immunity; that the "grapevine"

had it that Colson would be summoned to the grand jury that day and he would be asked about the meeting of June 19, 1972. Ehrlichman then gave Colson Dean's version of the events of that day. Colson said that he would deny Dean's allegation. As the call ended, Colson told Ehrlichman that, "There are a couple of things that you and I need to do to protect each other's flank here. . . . But — Listen, we'll talk about that." Ehrlichman responded, "Fair enough."

V

A.

On April 16, 1973, from 8:58 to 9:14 A.M., the President spoke by telephone with Petersen. He asked Petersen if there were any developments he "should know about," and he reassured Petersen that ". . . of course, as you know, anything you tell me, as I think I told you earlier, will not be passed on . . . [b]ecause I know the rules of the grand jury." Petersen then recounted to the President the developments of that day in the Watergate investigation.

Petersen disclosed to the President that Fred LaRue had confessed to participating in the crime of obstruction of justice; that he had attended a third planning meeting regarding the Liddy plan with Mitchell; and that LaRue had told Mitchell it was all over. Petersen also described LaRue as "rather pitiful."

Petersen then reported additional details regarding Ehrlichman's involvement: that Liddy had confessed to Dean on June 19, 1972 and that Dean had then reported to Ehrlichman; and that Colson and Dean were together with Ehrlichman when Ehrlichman advised Hunt to get out of town.

With respect to payments to the Watergate defendants, Petersen reported that he had been informed that Mitchell had requested that Dean approach Kalmbach to raise funds, and Dean had contacted Haldeman and Haldeman had authorized the use of Kalmbach. Petersen told the President that Kalmbach would be called before the grand jury regarding the details of the fund-raising operation. They also discussed the prosecutors' interest in the details of the transfer from Haldeman to LaRue of the $350,000 White House fund that was to be used for payments to the defendants.

B.

On the following morning, April 17, 1973, the President met with Haldeman. Early in the meeting, the President relayed Dean's disclosures to the prosecutor regarding his meeting with Liddy on June 19, 1972. The President also told Haldeman that the money issue was critical: "Another thing, if you could get John and yourself to sit down and do some hard thinking about what kind of strategy you are going to have with the money. You know what I mean." This comment is followed by a deletion of "material unrelated to President's action." Following the deletion, the transcript shows that the President instructed Haldeman to call Kalmbach to attempt to learn what Dean and Kalmbach were going to say Dean had told Kalmbach regarding the purposes of the fund-raising. In addition, the President instructed Haldeman:

> "Well, be sure that Kalmbach is at least aware of this, that LaRue has talked very freely. He is a broken man."

At 12:35 P.M. on April 17, 1973, the President met with Haldeman, Ehrlichman and Ziegler. At this meeting, he again relayed information relating to the Watergate investigation which he had received previously in confidence from Petersen.

The President and Haldeman discussed Petersen's opinion, expressed to the President, that while the prosecutors had a case on Ehrlichman, the grand jury testimony of Strachan and Kalmbach would be crucial to the determination of Haldeman's criminal liability. The President then returned to the issue of the purposes for which the funds were paid to the defendants—the issue which Petersen had informed him was then being explored by the grand jury. The President encouraged Haldeman and Ehrlichman to deal with the problem: "Have you given any thought to what the line ought to be—I don't mean a lie —but a line, on raising the money for these defendants?"

Later in the meeting, the President discussed with Haldeman and Ehrlichman the man Petersen had identified as critical to the issue of Haldeman's liability, Gordon Strachan. The President said, "Strachan has got to be worked out," and then proceeded to a discussion with Haldeman of the facts to which Strachan could testify. At this point, the President told Haldeman that Petersen believed that Strachan had received material clearly identifiable as telephone tap information. After a brief discussion of the issue, the President closed this discussion by saying, ". . . I want you to know what he's [Petersen] told me."

VI

A.

On April 17, 1973, the President met with Petersen from 2:46 to 3:49 P.M. The President opened the meeting by asking if there were anything new that he needed to know: he also cautioned Petersen that he did not want to be told anything out of the grand jury, unless Petersen thought the President needed to know it.

Later in the meeting, they discussed the status of Haldeman and Ehrlichman when Magruder was indicted.

HP: Let me ask you this, Mr. President, what would you do if we filed indictment against Magruder, hypothetically, and—

P: Yeah—Magruder or Dean?

HP: Magruder.

P: Magruder—oh you have indicted him.

HP: To which he is going to plead, and we named as unindicted co-conspirators everybody but Haldeman and Ehrlichman—never mind that the variation improves between them for the moment—

P: That you would name Colson for example?

HP: Well I don't know about Colson —Colson is again peripheral, but Mitchell, LaRue, Mardian—what-have-you . . .

P: Colson was a big fish in my opinion.

HP: Yeah, and a—

P: Would you name Dean for example?

HP: Oh yes.

P: Oh yes he was—

HP: And we name all of those people. We leave out Haldeman and Ehrlichman. Now one of the things we had thought about—

P: I get your point.

HP: —leaving them out was to give you time and room to maneuver with respect to the two of them.

P: Let me ask you—can I ask you —talking in the President's office.

HP: Yes sir.

[Sets up appointment—had to take time out to sign some papers]

P: You see we've got to run the government too [inaudible].

P: You mean if Haldeman and Ehrlichman leave you will not indict them?

HP: No sir, I didn't say that.

P: That would be a strange [inaudible].

HP: No—it was not a question of that—it was a question of whether or not they were publicly identified in that pleading at that time.

P: Yeah.

HP: And, well, for example, as a scenario—that comes out and you say—

P: [inaudible].

HP:—this is a shocking revelation—

P: Yeah.

HP:—as a consequence of that I have consulted and I have just decided to clear out everybody here who might have had — and as a consequence Mr. Ehrlichman and Mr. Haldeman are going. Thereafter, we would proceed with the evidence wherever it took us. That is what we were thinking about to be perfectly honest with you.

P: Well you really ought to include them [inaudible] if you include the others.

HP: Well.

P: Oh, you don't want names in the indictment of Magruder.

HP: That's right—unless we were able to go forward. Well, I don't want to belabor the point—I have made it clear that my view that I think they have made you very very vulnerable. I think they have made you wittingly or unwittingly very very vulnerable to rather severe criticism because of their actions. At least in public forums they eroded confidence in the office of the Presidency by their actions. Well you know it, I don't have to belabor it here—

Petersen also reported that LaRue had broken down and cried like a baby when it came to testifying about John Mitchell; that in all probability there was not enough evidence to implicate Strachan as a principal, that at this point he was a fringe character; that the case against Ehrlichman and Colson was more tangential that that against Haldeman; that Hunt had testified in the grand jury that Liddy had told him that "his principals" (who remained unidentified) had said that Hunt should leave the country. Petersen said that Gray admitted that Dean had turned over documents from Hunt's safe in Ehrlichman's presence; and that Magrauder was naming Haldeman and Ehrlichman not by firsthand knowledge, but by hearsay.

One minute after the end of his meeting with Petersen, the President met with Haldeman, Ehrlichman and Ziegler. The President relayed the information that Petersen had talked to Gray and that Gray admitted receiving and destroying the Hunt files. The President then told Haldeman and Ehrlichman about his conversation with Petersen regarding the issue of their possibly being named as unindicted co-conspirators in an indictment of Jeb Magruder. The President detailed the nature of this discussion:

P: Here's the situation, basically, [unintelligible]. They're going to haul him [Magruder] in court, have him plead guilty, put a statement out because Sirica always questions the witnesses who plead guilty. They are going to make it as broad as they can and as narrow as they can at the same time. By being as broad as they can, they are going to say that he has named certain people and they are going to name a group of people that is nonindictable co-conspirators. They're going to include everybody on that list. I said, "Is Dean going to be on that list?" He said, "Yes." He said, "Frankly [unintelligible] not include Haldeman and Ehrlichman, which gives you an option." I said, Are you telling me that if Haldeman and Ehrlichman decide to take leave, that you will not then proceed with the prosecution. "No," he said, "I don't mean that." He said, "What I mean is that they are not going to appear on that list and that [unintelligible] grand jury and make case there [unintelligible]. So there's the—

E: Well, whether we take leave or not doesn't affect the list that they read off.

P: Yes. Yes.

E: Oh, it does? Yes, it does. They will put us on the ilst if we don't take leave?

P: Yes, because otherwise, he says, Sirica is going to question Magruder and he's going to question [unintelli-

gible] and it appears [unintelligible]. If he does that, then it will apepar that the Justice Department again is covering up.

The President also relayed Petersen's report on Dean's current situation with the prosecutors. He indicated that Petersen had told him that Dean's lawyers had threatened to try the Administration in Dean's defense.

VII

During the course of the grand jury investigation the President tried to induce Petersen to refuse to grant immunity to Dean. The President was aware that Dean was attempting to provide the prosecutors with evidence to secure his immunity from prosecution, and that this testimony could implicate Haldeman, Ehrlichman, Colson, and possibly the President himself in wrongful conduct in the Watergate matter. Although the President did not order Petersen not to give immunity to Dean, the President did actively encourage him not to do so.

On April 8, 1973, Dean began meeting with the prosecutors, a fact that was immediately known to Haldeman, Ehrlichman and the President. On April 11, 1973, Ehrlichman telephoned Kleindienst to advise him that no White House aide should be granted immunity; and Kleindienst relayed this message to Petersen. Petersen has testified that this conversation did not make much of an impression on him until the end of the week when Petersen leared that Dean was cooperating with the prosecution.

By mid-April 1973, the poential threat Dean posed was well recognized. On April 14, Dean discussed with Haldeman and Ehrlichman his information that they were targets of the grand jury, and that in his opinion they could be indicted on obstruction-of-justice charges. On the same day, the President said to Haldeman and Ehrlichman that they should find out about Dean: ". . . To find out — let me put it this way. You've got to find out what the hell he is going to say. [Unintelligible] which is frightening to me. [unintelligible]."

On April 15, 1973, the President was told by Petersen of the nature of Dean's disclosures thus far, and of the fact that Dean was actively seeking immunity. During the next few days, the President closely followed the status of Dean's negotiations with the prosecutors. At a meeting with Petersen on April 16, 1973, the President asked about the deal with Dean; Petersen told the President that while there was no deal with Dean, Dean's counsel wanted one, and that Petersen was considering granting immunity to Dean. The President was again reminded that Dean presented an important threat:

P: You mean — you say that — I'm a little concerned about Dean's or his lawyers — that he's going to attack the President and so forth. Other than that, I mean Dean above all else —

HP: Well I don't the President personally — the Presidency as an office as the Administration.

P: Because of?

HP: Because of Ehrlichman and Haldeman.

P: It's Ehrlichman and Haldeman he's really talking about?

HP: That may be his guts poker in the course of negotiations. That's what they say.

P: Try the Administration and the President, [inaudible] affairs, [inaudible] huh?

Petersen has testified that at this meeting on April 16, 1973, the President appeared to be concealing from him the fact that Ehrlichman, one of the principal people Dean's tsetimony could damage, had drafted for a Presidential announcement on the Watergate matter a provision declaring that the President disapproved the granting of immunity to high White House officials.

On April 17, 1973, the President discussed with Haldeman Dean's efforts to secure immunity, and they acknowledged the threat that that effort presented: "Dean is trying to tell enough to get immunity and that is frankly what it is Bob." Haldeman responded, "That is the real problem we've got . . ." At a meeting later in the day, Ehrlichman relayed to the President Colson's recommendation that Dean be dealt with summarily:

E: Very simply put, I think his argument will be that the city of Washington, generally knows that Dean had little or no access to you.

P: True, that's quite right. Dean was just a messenger.

E: That knowledge imputed to us is knowledge imputed to you and if Dean is [unintelligible] and testified that he imputed great quantities of knowledge to us, and it allowed to get away with that, that, that will seriously impair the Presidency ultimately. 'Cause it will be very easy to argue — that all you have to do is read Dean's testimony — look at the previous relationships — and there she goes! So, he says the key to this is that Dean should not get immunity. That what he wants to tell you.

P: Well, he told me that, and I couldn't agree more.

1: Now he says you have total and complete control over whether Dean gets immunity through Petersen. Now that's what he says. He said he would be glad to come in and tell you how to do it, why, and all that stuff.

P: I realize that Dean is the [unintelligible]. Dean, of course, let's look at what he has, his [unintelligible] and so forth about [unintelligible] go popping off about everything else that is done in the government you know, and the bugging of the—

E: Well, the question is, I suppose is which way he is liable to do it most.

P: First of all, if he gets immunity he'll want to pay just as little price as he can.

E: Well, the price that—the quid-pro-quo for the immunity is to reach one through us to all of us. Colson argues that if he is not given immunity, then he has even more incentive to go light on his own malefactions and he will have to climb up and he will have to defend himself.

Later in this conversation the President acknowledged that "Petersen's the guy that can give immunity. . . ." and "Dean is the guy that he's got to use for the purpose of making the case." The meeting concluded with the President agreeing to get Petersen in to talk about immunity at which time Petersen would be told that the President did not want anybody on the White House staff to be given immunity.

Following the President's expression of agreement with Colson's recommendation that Dean should be denied immunity the President, Haldeman and Ehrlichman considered the matters about which Dean might testify. They expressed concern that Dean could disclose facts relating to the Ellsberg break-in; "the I.T.T. thing"; and Dean's conversation with the President on March 21, 1973 regarding the payment to Hunt. The meeting ended with the President agreeing to get Petersen in to talk about immunity, at which time Petersen would be told that the President did not want anybody on the White House staff to be given immunity.

Later in the afternoon of April 17, 1973, the President met with Petersen. At this meeting, the President attempted to influence Petersen's decision on the granting of immunity to Dean by suggesting to Petersen that any immunity grant to Dean would be interpreted as a deal on Petersen's part to conceal the fact that Petersen had provided Dean with grand jury information during the summer of 1972. The President first expressed his concern over leaks from the grand jury in 1972. The President later stated that while he did not care what Petersen did on immunity to Strachan or other "second people", Petersen could not give immunity to Dean because Petersen's "close relationship" with Dean would make it look like a "straight deal". Near the end of the meeting, Petersen objected to the inclusion of a reference in the President's public statement opposing grants of immunity.

Within an hour the President issued a public statement on Watergate, including a provision that the President felt that no individual holding a position of major importance in the Administration should be granted immunity. Two days later the President met with Wilson and Strickler, the attorneys for Haldeman and Ehrlichman. At this meeting the President described Dean as a "loose cannon" and indicated to them that he had put out his statement on immunity because the prosecutors were at that point hung up on the question of giving immunity to Dean.

On April 18, 1973, the President called Petersen. Petersen has testified that the President "was rather angry," and that he chewed Petersen out for having granted immunity to Dean. According to Petersen, the President told him that he knew that Dean had been given immunity because Dean had told him; Petersen told the President that that simply wasn't so; the conversation got "nasty" and Petersen told the President that he would check on the matter and get back in touch. Petersen checked with the prosecutors and called the President back and reassured him that Dean had not been given immunity.

When Petersen reported this denial, the President said he had a tape to prove his contention.

By the end of April, the prosecutors' negotiations with Dean for immunity were broken off, and Dean did not receive immunity from prosecution.

VIII

From April 18, 1973, through April 30, 1973, the date of Haldeman's and Ehrlichman's resignations, the President continued his series of meetings with Petersen. At many of these meetings the President sought information from Petersen on the progress of the Watergate investigation and on the evidence that was being accumulated on the involvement of Haldeman and Ehrlichman. During this period, the President met frequently with Haldeman and Ehrlichman.

The use to which the President put the information he had been obtaining from Petersen during this period, however, is indicated by the events of April 25 and 26, 1973. At that time the President knew that Haldeman was a prime suspect of the grand jury investigation. On April 15, 1973, Petersen had recommended to the President that Haldeman be dismissed because of his alleged involvement in various Watergate-related matters; from that date Petersen had kept the President informed about the evidence against Haldeman. On April 17, 1973, Petersen also told the President that the evidence being accumulated on Haldeman, Ehrlichman and Colson indicated that Haldeman was the most directly involved. By April 25, 1973, the Presi-

dent was aware that the issue of the payments to the Watergate defendants and Haldeman's involvement in this matter were being closely investigated by the grand jury.

On April 25, 1973, the President directed Haldeman to listen to the tape of the March 21 conversation with Dean. Dean had been speaking to the prosecutors during April; Haldeman in listening to the tapes would be able to prepare a strategy for meeting whatever disclosures Dean might make.

On April 25, 1973, pursuant to the President's direction, Haldeman requested and received twenty-two tapes of Presidential conversations during February, March and April, 1973. On the afternoon of April 25, 1973, Haldeman listened to the March 21, 1973, morning conversation and made notes from the tape. At 4:40 P.M. on April 25, 1973, Haldeman met with the President and reported to him on the contents of the tape. The President instructed Haldeman to listen to the March 21, tape again on the next day.

The meeting between the President and Haldeman on April 25, 1973, ended at 5:35 P.M. Two minutes later, at 5:37 P.M., Petersen entered and met with the President for more than an hour. The President did not inform Petersen of the taping system, the contents of the March 21, 1973 tape, or of the fact that Haldeman had been directed to listen to it and had done so that very day.

On April 26, 1973, Haldeman again received the group of tapes, including the March 21 tape. He listened again to the March 21 tape and reported to the President. On April 26, 1973, Haldeman and the President met for more than five hours.

IX

On April 27, 1973, the President met with Petersen. They discussed the grand jury investigation and the President's concern about rumors that Dean was implicating the President in the Watergate matter. Petersen assured the President that he had told the prosecutors that they had no mandate to investigate the President. In this context, the President made the following statement to Petersen about this conversation of March 21, 1973 and the issue of the payment of Hunt:

". . . Let me tell you the only conversations we ever had with him, was that famous March 21st conversation I told you about, where he told me about Bittman coming to him. No, the Bittman request for $120,000 for Hunt. And I then finally began to get at them. I explored with him thoroughly, 'Now what the hell is this for?' He said, 'It's because he's blackmailing Ehrlichman.' Remember I said that's what it's about. And Hunt is going to recall the seamy side of it. And I asked him, 'Well how would you get it? How would you get it to them?' so forth. But my purpose was to find out what the hell had been going on before. And believe me, nothing was approved. I mean as far as I'm concerned—as far as I'm concerned turned it off totally."

The President's statement that he turned off totally the payment of blackmail money to Hunt on March 21, 1973, is not consistent with the facts as reflected in the House Judiciary transcripts of the tape recordings of the meetings of that date.

Later at the meeting with Petersen on April 27, 1973, the President provided Petersen with another inaccurate version of the events occurring on March 21 and March 22, 1973:

P. Dean. You will get Dean in there. Suppose he starts trying to impeach the President, the word of the President of the United States and says, "Well, I have information to the effect that I once discussed with the President the question of how the possibility, of the problem," of this damn Bittman stuff I spoke to you about last time. Henry, it won't stand up for five minutes because nothing was done, and fortunately I had Haldeman at that conversation and he was there and I said, "Look, I tried to give you this, this, this, this, this, and this." And I said, "When you finally get it out, it won't work. Because, I said, "First, you can't get clemency to Hunt." I mean, I was trying to get it out. To try to see what that Dean had been doing. I said, "First you can't give him clemency." Somebody has thrown out something to the effect that Dean reported that Hunt had an idea that he was going to get clemency around Christmas. I said, "Are you kidding? You can't get clemency for Hunt. You couldn't even think about it until, you know, '75 or something like that." Which you could, then because of the fact, that you could get to the — ah — But nevertheless, I said you couldn't give clemency. I said, "The second point to remember is 'How are you going to get the money for them?' If you could do it, I mean you are talking about a million dollars." I asked him — well, I gave him several ways. I said, "You couldn't put it through a Cuban Committee could, you?" I asked him, because to me he was sounding so damned ridiculous. I said, "Well under the circumstances," I said, "It looks to me like the problem is John Mitchell." Mitchell came down the next day and we talked about executive privilege. Nothing else. Now, that's the total story. And—so Dean—I just want you to be sure that if Dean ever raises the thing, you've got the whole thing. You've got that whole thing. Now kick him straight —.

April 30, 1973, to the Present

I

On April 30, 1973, the President accepted the resignation of Haldeman, Ehrlichman, and Kleindienst, and requested and received the resignation of Dean. The President pledged to the American people that he would do everything in his power to insure that those guilty of misconduct within the White House or in his campaign organization were brought to justice. He stated that he was giving Richardson absolute authority to make all decisions bearing on the prosecution of the Watergate case, including the authority to appoint a special prosecutor. On May 9, 1973, the President reiterated this pledge and added that the special prosecutor, appointed by Elliot Richardson, would have the total cooperation of the executive branch. On May 21, 1973, Richardson appeared before the Senate Judiciary Committee with special prosecutor designate Archibald Cox. Richardson submitted to the committee a statement of duties and responsibilities of the special prosecutor. The statement provided that the special prosecutor would have jurisdiction over offenses arising out of the unauthorized entry into the D.N.C. headquarters at the Watergate, offenses arising out of the 1972 Presidential election, allegations involving the President, members of the White House staff or Presidential appointees and other matters which he consented to have assigned by the Attorney General. The guidelines also provided that the special prosecutor would have full authority for determining whether or not to contest the assertion of executive privilege or any other testimonial privilege and that he would not be removed except for extraordinary improprieties.

On May 22, 1973, the President stated publicly that Richardson had his full support in seeing the truth brought out. The President also stated that executive privilege would not be invoked as to any testimony concerning possible criminal conduct or discussions of such conduct. On May 25, 1973, just before Richardson was sworn in as Attorney General, the President mentioned privately to Richardson that the waiver of executive privilege extended to testimony, but not documents.

II

Documents necessary to the investigation of wrongdoing were segregated in secure rooms in the E.O.B. and the White House. Beginning in April, 1973, the files of Haldeman, Strachan, Ehrlichman, and Dean, among others, were locked in a safe room in the White House. On April 30, 1973, just before his resignation, Ehrlichman instructed David Young to make sure that all papers involving the Plumbers were put in the President's file. Ehrlichman told Young that Ehrlichman was going to be putting some papers in the President's file before he left.

On June 11, 1973, and June 21, 1973, the special prosecutor wrote to Buzhardt, the President's counsel, requesting an inventory of the files of Haldeman, Ehrlichman, Mitchell, LaRue, Liddy, Colson, Chapin, Strachan, Dean, Hunt, Krogh, and Young, and other files related to the Watergate investigation. After many weeks Buzhardt told Cox there could be no agreement on an inventory.

On August 23, 1973, Cox requested from the White House certain records relating to the Pentagon Papers and the Fielding break-in. Cox repeated the request on October 4, 1973. As of October 29, 1973, none of the documents had been turned over to the special prosecutor. On August 27, 1973 Cox requested White House records on Joseph Kraft and the electronic surveillance of Kraft. As of November 5, 1973, this request had not been fulfilled.

In September, 1973, prior to his appearance before the Senate Select Committee and the grand jury, special assistant to the President Patrick Buchanan was instructed by White House counsel to transfer certain documents to the President's files and not to take them from the White House.

III

Important evidence bearing on the truth or falsity of allegations of misconduct at the White House is contained on recordings of conversations between the President and his staff.

The President attempted to conceal the existence of these recordings, refused to make them available to the special prosecutor once their existence became known, and the evidence indicates that he discharged Cox for refusing to agree to cease trying to obtain them.

Before the existence of the White House taping system became known, special prosecutor Cox received information that the President had a tape of his April 15, 1973, meeting with John Dean. On June 11 and June 20, 1973, Cox wrote to Buzhardt requesting access to that tape. Cox pointed out that the President had offered the tape to Henry Petersen when Petersen was in charge of the Watergate investigation. Buzhardt spoke to the President about Cox's request, and informed Cox that the tape in question was a recording fo the President's recollections of the day and that the tape would not be produced. Buzhardt did not tell Cox that all Presidential conversations in the

Oval Office and the Executive Office Building were recorded, many of which clearly had a direct bearing on the investigation.

On July 16, 1973, Alexander Butterfield testified before the Senate Select Committee and publicly disclosed the existence of the White House taping system. On July 18, 1973, Cox requested tapes of eight Presidential conversations. On July 23, 1973 White House counsel Charles Alan Wright refused the request, and Cox issued a subpoena for tape recordings of nine Presidential conversations. On Aug. 29, 1973, Judge Sirica ordered the production of the recordings for in camera review. After an appeal by the President, the United States Court of Appeals upheld Judge Sirica's order on Oct. 12, 1973. No appeal was taken from this court decision.

On Oct. 17, 1973, Richardson transmitted a proposal to Cox whereby, in lieu of in camera inspection, Senator Stennis would verify White House transcripts of the tapes. Richardson told Cox that the question of other tapes and documents would be left for later discussions. On Oct. 18, 1973, Cox replied that the President's proposal was not, in essence, unacceptable. The President, through his lawyer, Charles Alan Wright, sought to require Cox to agree not to go to court in the future for other tapes and documents. After Richardson learned of this new condition, he wrote the President that while he had thought the initial proposal reasonable, he objected to the added condition. On the evening of Oct. 19, 1973, the President issued a statement ordering Cox to agree to the "Stennis proposal," and to agree also not to go to court for other tapes and documents. On Oct. 20, 1973, Cox replied that his responsibilities as special prosecutor compelled him to refuse to obey the order.

On Oct. 20, 1973, when the President instructed Richardson to fire Cox for refusing to agree not to go to court for tapes and documents, Richardson resigned. When the President gave the same instruction to Deputy Attorney General Ruckelshaus, Ruckelshaus also resigned.

There is evidence that the President had decided to fire Cox well in advance of Oct. 20. On July 3, 1973, General Haig told Richardson that it could not be a part of the special prosecutor's charter to investigate the President, and that the President might discharge Cox. On July 23, 1973, Haig again called Richardson and complained about various activities of the special prosecutor. Haig said that the President wanted a "tight line drawn with no further mistakes," and that "if Cox does not agree, we will get rid of Cox." Richardson has stated in an affidavit submitted to the House Judiciary Committee that he met with the President in late September or early October, 1973. "After we finished our discussion about Mr. Agnew, and as we were walking toward the door, the President said in substance, 'Now that we have disposed of that matter,

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we can go ahead nad get rid of Cox.'"

After the President fired Cox, resolutions were introduced in the House calling for the President's impeachment. Bills were introduced in the House and Senate calling for the creation of an independent investigative agency.

The President, under enormous public pressure, turned over some subpoenaed tapes and offered explanations for the absence of others. The President also authorized the appointment of another special prosecutor.

V.

On April 25, 1973, Haldeman, at the President's direction, listened to the tape of the March 21, 1973, morning meeting among the President, Dean and Haldeman. Haldeman made notes from the tape and reported to the President. The President concluded that Haldeman should listen to the March 21 tape again to ascertain the answers to certain points of doubt raised by the tape. On April 26, 1973, Haldeman again received the March 21 tape. He subsequently listened to the tape again and reported to the President.

On June 4, 1973, the President listened to a tape recording of certain of his conversations in February and March, 1973. During the day the President spoke with Chief of Staff Alexander Haig and Press Secretary Ron Ziegler about the March 21 conversation. The President said:

> President: [. . . .] Well, as I told you, we do know we have one problem: It's that damn conversation of March twenty-first due to the fact that, uh, for the reasons [unintelligible]. But I think we can handle that.
>
> Haig: I think we ca—, can. That's that's the—.
>
> President: Bob can handle it. He'll get up there and say that—Bob will say, "I was there; the President said—."
>
> * * * *
>
> President: Okay. The twenty-first and the twenty-second. Uh, uh, twenty—,twenty-first I've got to Bob already. The twenty-second [unintelligible].
>
> Ziegler: [Unintelligible]
>
> President: Well—no, if you can—I don't think you can. He's, he's got it all in our file and I don't—let's just forget it. I think after the twenty-first we forget what the hell—What do you think?

Shortly after the existence of the White House taping system became public knowledge, the President had the taping system disconnected. Custody of the tapes was taken from the Secret Service and given to a White House aide. Special prosecutor Cox wrote to Buzhardt to express concern that care be taken to insure the integrity of tapes that the special prosecutor had requested. Cox asked Buzhardt to take all necessary steps to see that the custody of the tapes was properly limited and that access to them was fully documented. On July 25, 1973, Buzhardt stated that the tapes were being preserved intact. Buzhardt stated that the tapes were under the President's sole personal control.

After the Court of Appeals decision in Nixon v. Sirica requiring the President to surrender the tapes that Cox had subpoenaed, the President informed Judge Sirica that some of this material was unavailable—specifically, that there was an 18½ minute gap on the June 20, 1972, conversation between Haldeman and the President, and that there was no April 15 tape of his conversation with John Dean and no June 20, 1972, tape of the telephone conversation between the President and Mitchell.

The erased conversation of June 20, 1972, contained evidence showing what the President knew of the involvement of his closest advisors shortly after the Watergate break-in. The erased meeting between the President and Haldeman occurred approximately one hour after Haldeman had been briefed on Watergate by Ehrlichman, Mitchell, Dean and Kleindienst, all of whom had learned of White House and C.R.P. involvement. Haldeman notes show and Buzhardt has acknowledged that the only erased portion of the tape was the conversation dealing with Watergate.

The court- appointed advisory panel of technical experts, selected jointly by the special prosecution force and the White House counsel, unanimously concluded that : (i) the erasing and rerecording which produced the buzz on the tape were done on the original tape; (ii) the Uher 5000 recorder machine used by Rose Mary Woods probably produced the buzz; (iii) the erasures and buzz recordings were done in at least five to nine separate and contiguous segments and required hand operation of the control of the Uher 5000 recorder to produce each erasure and instance of rerecording; and (iv) the erased portion of the tape originally contained speech which because of the erasures and rerecording could not be recovered. (An analysis of this report is set forth in Appendix A.)

The President has stated that the April 15, 1973, tape never existed, because the tape on the recorder in the White House taping system at his Executive Office Building office ran out. He also stated that the dictabelt of his recollections of the day (referred to by Buzhardt in June, 1973, in refusing Cox's request for a tape) could not be located. Among the conversations that would have been recorded on the afternoon and evening of April 15, 1973, was a meeting between the President and Dean. Dean has testified that during this meeting the President stated in a low voice that he had been foolish to discuss Hunt's clemency with Colson and that he had been joking when he said one million dollars for the Watergate defendants could be raised.

On April 18, 1973, the President offered to let Petersen hear the tape of his April 15, 1973, meeting with Dean. On June 4, 1973, the President listened to tape recordings of certain of his conversations in February and March, 1973. When his aide, Stephen Bull, asked which additional tapes he wanted, the President said:

> President: March twenty-first. I don't need April, I don't need April fifteen. I need the sixteenth. [Untelligible] correct. There were two on April sixteenth. I just want the second [unintelligible]. You can skip the—April fifteen.
>
> Bull: And March twenty-first.
>
> President: March twenty-first, that's right, I have those.
>
> Bull: [Unintelligible]
>
> President: Yeah. Okay. I'll check. Haldeman's got them [unintelligible]. No, Ziegler's got them. Just ask Ziegler. All right . . .

During an interview with the Senate Select Committee staff in the summer of 1973, White House assistant Stephen Bull stated that in June 1973 Haig called him to request that the April 15 tage of the President's conversation with Dean be flown to the President at San Clemente. Bull stated that since there were no further courier flights to San Clemente that night, Haig instructed Bull to arrange for the Secret Service to play the tape for Buzhardt, so that Buzhardt could brief the President by telephone on its contents. Later Bull testified at hearings regarding the missing Presidential tapes that he had only gussed at the date of the conversation, and that the President must have been referring to the tape of March 20 telephone call.

Finally, when John Dean appeared before the Senate Select Committee before the existence of the White House tape recording system was publicly revealed, he testified that he had the impression that his conversation with the President on April 15 was being recorded. Dean testified that his suspicion was aroused when the President stated that he had been joking when he remarked on March 21 that raising a million dollars for the Watergate defendants would be no problem, and when the President walked to a far corner of the room to say in a low voice that discussing Hunt's clemency with Colson had been a mistake.

In addition to the gap in the June 20

tape and the nonexistence of the April 15 tape and dictabelt, all of which were in the sole personal custody of the President, there are also discrepancies in other dictabelts. There is a 38-second gap in the dictabelt on which the President dictated his recollections of a June 20, 1973, conversation with Mitchell. There is a 57-second gap in a cassette on which the President dictated his recollections of his March 21, 1973, conversation with Dean. On June 16, 1973, Buzhardt told Cox there was a dictabelt of the President's recollections of his April 15 conversation with Dean. But in November, 1973, the President, through his attorney, informed the court that he could not find this dictabelt.

IV

Pursuant to the mandate of the House of Representatives, this committee has issued subpoenas to the President requesting tapes and other material bearing on Watergate. In all instances the President refused to comply. The President has provided the committee only with those materials he had already turned over to the special prosecutor and with edited transcripts of certain of the subpoenaed conversations.

Certain documents and the edited transcripts provided by the White House differ substantially from other evidence on the same subjects in the possession of the Judiciary Committee.

The House Judiciary Committee has been able to check eight of the White House edited transcripts against the transcripts prepared by its staff from the tapes which the President has turned over to the Committee. The comparison shows substantial differences in all eight transcripts. The most frequent difference is that Presidential remarks are omitted from the White House version.

When the President announced that he was providing transcripts to the committee, he stated that everything that was relevant to the President's knowledge or actions with regard to Watergate was included in the transcripts. The White House transcripts, however, are incomplete. The House Judiciary Committee transcript of the March 22, 1973, conversation among the President, Haldeman, Ehrlichman, Mitchell and Dean shows that the participants continued to talk about Watergate after the point in the discussion when the White House transcript ends. In a portion of the discussion omitted from the White House version, the President tells Mitchell:

"[. . . .] Now let me make this clear. I, I, I thought it was, uh, very, uh, very cruel thing as it turned out —although at the time I had to tell [unintelligible]—what happened to Adams. I don't want it to happen with Watergate—the Watergate matter. I think he made a, made a mistake, but he shouldn't have been sacked, he shouldn't have been—And, uh, for that reason, I am perfectly willing to—I don't give a shit what happens. I want you all to stonewall it, let them plead the Fifth Amendment, cover-up or anything else, if it'll save it—save the plan. That's the whole point. On the other hand, uh, uh, I would prefer, as I said to you, that you do it the other way. And I would particularly prefer to do it that other way if it's going to come out that way anyway. And that my view, that, uh, with the number of jackass people that they've got that they can call, they're going to—The story they get out through leaks, charges, and so forth, and innuendos, will be a hell of a lot worse than the story they're going to get out by just letting it out there."

* * *

"[. . . .] [U]p to this point, the whole theory has been containment, as you know, John."

* * *

"[. . .] That's the thing I am really concerned with. We're going to protect our people, if we can."

In response to the committee's request for the conversation between the President and Dean on March 17, 1973, from 1:25 to 2:10 P.M., the President supplied the committee with a three-page transcript that deals only with Segretti and the Fielding break-in.

On June 4, 1973, however, the President described this March 17 conversation with Dean to Ron Ziegler. The committee has a tape recording of that June 4 conversation. The President said:

"[. . .] then he said—started talking about Magruder, you know: 'Jeb's good, but if he sees himself sinking he'll drag everything with him.' "

* * *

"[. . .] And he said that he'd seen [. . .] Liddy right after it happened. And he said, 'No one in the White House except possibly Strachan's involved with, or knew about it.' He said, 'Magruder had pushed him without mercy.' [. . .] I said, 'You know, the thing here is that Magruder [. . .] put the heat on, and Sloan starts pissing on Haldeman.' I said, 'That couldn't be [. . .]' I said, 'We've, we've got to cut that off. We can't have that go to Haldeman.' "

* * *

"[. . .] And I said, well, looking to the future, I mean, here are the problems. We got this guy, this guy and this guy. And I said, 'Magruder can be one, one guy—and that's going to bring it right up home. That'll bring it right up to the, to the White House, to the President.' And I said, 'We've got to cut that back. That ought to be cut out.' "

The President has also provided the committee with a five-page transcript of his conversation with Assistant Attorney General Henry Petersen on the afternoon of April 18, 1973. Petersen has testified as to his recollection of that conversation. The transcript is not in accord with Petersen's recollection.

Petersen has testified that during the telephone call the following conversation took place: The President called Petersen and told him that Dean had been immunized. The President told Petersen that, although Petersen had told the President that Dean had not been given immunity, the President knew that was not true. The President stated that he knew Dean had been immunized, and he knew it because Dean himself had told the President. Petersen again told the President that Dean had not been immunized. Later in the conversation, Petersen told the President he would double-check on Dean's status. Nowhere in the President's transcript of the conversation is there any discussion of Dean having been given immunity.

On June 24, 1974, this committee issued a subpoena to the President requesting copies of certain of John Ehrlichman's notes which were impounded in the White House. On July 12, 1974, the committee was informed that the President would furnish the committee copies of Ehrlichman's notes which the President had turned over to Ehrlichman and the special prosecutor. On July 15, 1974, the White House provided the notes to the committee. Some of the material on the notes had been blanked out. On July 16, the committee obtained copies of the notes which the White House had furnished to Ehrlichman and the special prosecutor. Some of the material which had been blanked out on the copies provided to the committee by the President had not been blanked out on the copies the committee received from the special prosecutor.

ABUSE OF PRESIDENTIAL POWERS

The evidence relating to the Watergate break-in and cover-up, reviewed above in detail, demonstrates various abuses of Presidential power, including:

¶The directive to the C.I.A. to interfere in the F.B.I. investigation.

¶The use of Counsel to the President John Dean to interfere with the investigation.

¶Offers of executive clemency for improper purposes.

¶Obtaining information from Assistant Attorney General Petersen and passing it on to targets and potential targets of the investigation.

¶Discouraging the prosecutors from granting immunity to Dean.

¶The firing of Special Prosecutor Archibald Cox.

In this section of the memorandum, other instances of possible abuse of Presidential powers are examined. They involve seven areas: (1) intelligence gathering, including the 1969-1971 wiretaps authorized by the President and conducted by the F.B.I.; the wiretap and F.B.I. surveillance of Joseph Kraft, the Huston Plan, the Secret Service wiretap of Donald Nixon, and the F.B.I. investigation of Daniel Schorr; (2) the Special Investigations Unit, including the Fielding break-in and the use of the C.I.A.; (3) the concealment of intelligence-gathering activities, including the concealment of the records of the 1969-71 wiretaps and the Fielding break-in, and the offer of the position of F.B.I. Director to the judge presiding in the Ellsberg trial; (4) endeavors to use the Internal Revenue Service for the political benefit of the President; (5) the appointment of Richard Kleindienst as Attorney General; (6) the 1971 milk price support decision, and (7) expenditures by the General Services Administration on the President's properties at Key Biscayne and San Clemente.

The issue in each of these areas is whether the President used the powers of his office in an illegal or improper manner to serve his personal, political or financial interests.

I.
Illegal Intelligence-Gathering

From early in the President's first term, the White House, at his direction or on his authority, engaged in a series of activities designed to obtain intelligence for the political benefit of the President. These activities involved widespread and repeated abuses of power, illegal and improper activities by executive agencies, and violations of the constitutional rights of citizens.

A. The 1969-1971 Wiretaps

In May, 1969, the President authorized a program of wiretaps of government employes and newsmen, originally in an effort to determine the sources of leaks of secret information related to foreign policy. Under this program, electronic surveillance was instituted by the F.B.I. at the request of the White House on seven National Security Council employes, three employes of government agencies, four newsmen, and three White House staff members. The F.B.I. was instructed by N.S.C. official Alexander Haig at the time of the first taps not to enter records of thesurveillance in F.B.I. indexes.

Normally, the Justice Department reviews the necessity and propriety of the taps every 90 days. This practice was not followed with respect to the taps of any of these 17 individuals.

The directions to the F.B.I. to institute the wiretaps came variously from Haig, Mitchell and Haldeman, but the President has acknowledged that he authorized each of them. Reports on the special wiretaps were sent during 1969 and 1970 to the President, Haldeman, Ehrlichman and Kissinger. From May 12, 1970, to Feb. 11, 1971, reports were sent only to Haldeman.

The reports sent to the White House included information on the personal

and political activities of the persons who were wiretapped. They included information with respect to the voting plans of certain Senators, the activities of critics of administration policies, a Democratic Presidential candidate's campaign and the personal activities and political plans of White House employes. None of the reports bore on the disclosure of classified material. The President acknowledged that the reports contained no information useful to national security, and demonstrated an awareness of the political nature of the contents of the reports in his conversation with John Dean on Feb. 28, 1973.

Three of the seven N.S.C. staff members subject to the special wiretaps continued to be wiretapped for substantial periods after leaving the N.S.C., one tap remaining in place nine months after Assistant F.B.I. Director Sullivan recommended that coverage be removed and after the employe terminated all relationship with the N.S.C. Two of these three N.S.C. employes who had left the Government were wiretapped while they were serving as advisers to a United States Senator who was a candidate for the Democratic Presidential nomination. The reports from these taps, which had previously been sent to Kissinger, were shifted to Haldeman at the direction of the President after the two men's affiliation with the N.S.C. ended. Three White House staff members working in areas unrelated to national security and with no access to N.S.C. materials were wiretapped. The requests for two of these wiretaps were oral, one by Haldeman and one by Mitchell. A wiretap of a member of Ehrlichman's staff was specifically denominated as off the record. Reports of the wiretap and physical surveillance of this staff member were sent to Ehrlichman.

On at least one occasion, material contained in a summary letter sent by F.B.I. Director Hoover to the President was used by the President's staff for political purposes. Director Hoover's letter disclosed former Secretary of Defense Clark Clifford's plan to write an article attacking President Nixon in connection with the Vietnam war. White House staff members devised methods of countering Clifford's article and sent them to Haldeman. Haldeman directed Magruder to be ready to react and suggested finding methods of "pre-action." He concluded, ". . . the key now is how to lay groundwork and be ready to go — as well as to take all possible preliminary steps." And: "Let's get going." Ehrlichman characterized the Clifford information as "the kind of early warning we need more of." And he noted to Haldeman: "Your game planners are now in an excellent position to map anticipatory action."

B. Joseph Kraft Wiretap and Surveilance

In June, 1969, Ehrlichman directed his assistant, John Caulfield, to have a wiretap installed on the telephone of newspaper columnist Joseph Kraft. The wiretap was installed by John Ragan, a security consultant to the Republican National Committee, and it remained in place for one week. Kraft was in Europe, and none of his own conversations were intercepted. Ehrlichman has testified that he discussed the wiretap with the President, and that the wiretap was authorized for a national security purpose, but that Ehrlichman did not know that the wiretap had in fact been installed.

The wiretap on Kraft's home was not approved by the Attorney General, and no record was made of it. The Kraft tap was installed within three weeks after the first F.B.I. wiretaps under the President's special program and within a week after a tap on another newsman was installed by the F.B.I. Kraft had no history of using leaked national security information in his newspaper column.

After the tap was installed, Ehrlichman told Caulfield that the F.B.I. had been persuaded to take over the surveillance of Kraft. The F.B.I. arranged for a microphone to be installed in Kraft's hotel room in a European country. F.B.I. records stated that in July and November of 1969 reports on the coverage were sent to Ehrlichman. From Nov. 5 to Dec. 12, 1969, the F.B.I. conducted spot physical surveillance on Kraft in Washington, D.C.

C. The "Huston Plan"

On June 5, 1970, the President appointed an ad hoc committee consisting of the heads of the F.B.I., C.I.A., National Security Agency (N.S.A.) and Defense Intelligence Agency (D.I.A.) to study the need for better domestic intelligence operations in light of an escalating level of bombing and other acts of domestic violence. On June 25, the ad hoc committee submitted a report containing options for relaxing existing restraints on intelligence-gathering procedures. Footnotes in the report noted the F.B.I.'s objection to relaxing the restraints on intelligence-gathering.

During the first week of July, Presidential Staff Assistant Tom Charles Huston sent a memorandum to Haldeman recommending that the President adopt options in the report of the ad hoc committee to relax restraints on intelligence-gathering collection. Huston noted that the options to relax restraints for surreptitious entries and covert mail covers were illegal, but nevertheless recommended them and wrote that in earlier years Hoover had conducted surreptitious entries with great success.

On July 14, Haldeman sent a memorandum to Huston stating that the President had approved Huston's recommendations. On Haldeman's instructions, Huston prepared and distributed to the members of the committee a formal decision memorandum advising that the President had decided to relax restraints on electronic surveillances and penetrations, mail covers and surreptitious entries.

F.B.I. Director Hoover and Attorney General Mitchell opposed the decision, and Mitchell has testified that he informed the President and Haldeman of his opposition. On July 27 or 28, 1970, on Haldeman's instructions, Huston recalled the decision memorandum.

Huston had also endorsed the ad hoc committee's recommendation for the establishment of an Intelligence Evaluation Committee. The recommendation was implemented in the fall of 1970, for the stated purpose of coordinating and making more effective the separate intelligence efforts of the D.I.A., N.S.A., C.I.A. and F.B.I. Some of the material gathered by the Intelligence Evaluation Committee was sent to Haldeman in a "Political Matters" memorandum dated Feb. 1, 1972, reporting on potential demonstrations at the Republican National Convention.

D. The Donald Nixon Surveillance and Wiretap

In 1969, Haldeman and Ehrlichman requested the C.I.A. to conduct a physical surveillance of Donald Nixon because he was moving to Las Vegas and would come in contact with criminal elements. The C.I.A. refused.

In late 1970, the Secret Service, whose primary duty is the physical protection of the President, placed a wiretap on the telephone of Donald Nixon, the President's brother. The President has said that the wiretap "involved what others who were trying to get [Donald Nixon], perhaps, to use improper influence, and so forth, might be doing and particularly anybody who might be in a foreign country." The President also said that his brother knew about the wiretap "during the fact."

While there is no direct evidence that the President ordered the installation of the tap, it would seem extremely unlikely that a wiretap on his brother would have been undertaken without the President's approval.

E. Daniel Schorr Investigation

In August, 1971, Daniel Schorr, a television commentator for CBS News, was invited to the White House to meet with staff assistants to the President about what they considered to be unfavorable news analysis by Schorr of a Presidential speech. Shortly thereafter, while traveling with the President, Haldeman directed Lawrence Higby, his chief aide, to obtain an F.B.I. background report on Schorr. Following Higby's request, the F.B.I. conducted an extensive investigation of Schorr, interviewing 25 persons, including members of Schorr's family, friends, employers and the like, in seven hours.

Following public disclosure of the investigation, a "cover story" was created. Colson testified that the President and Colson agreed to state that Schorr was investigated in connection with a potential appointment as an assistant to the Chairman of the Council on Environmental Quality. Colson testified that the President knew Schorr had never been considered for such a position. Haldeman has testified that Schorr was not being considered for any Federal appointment, and that he could not remember why the request was made.

Wiretaps without a court order are generally illegal and violate the constitutional right of citizens against unreasonable searches and seizures. The Supreme Court held in 1972 that the President had no constitutional power to authorize warrantless wire-taps for domestic security purposes; it reserved the question of his constitutional authority to conduct national security electronic surveillance to gather foreign intelligence information.

The wiretaps conducted by the F.B.I. in 1969-71, however, did not meet the Justice Department criteria then in effect for national security wire-taps or the definition contained in 18 U.S.C. § 2511(3). In the case of the three taps of members of the President's domestic staff and the continuation of reports of the political activities of two N.S.C. employes long after they had terminated their relationship with the N.S.C., there could be no national security justification under any reasonable interpretation of that term.

Similarly, the Kraft wiretap was illegal. The eavesdropping in Kraft's hotel room in a foreign country also violated his constitutional rights—which do not end at the nation's borders. It also involved the F.B.I. in foreign operations beyond its authority.

The Donald Nixon wiretap exceeded the statutory authority of the Secret Service to provide physical protection for the President and his immediate family; and consensual wiretap is nonetheless illegal unless the consent is obtained before the interception of conversations.

These activities and other surveillance that may not have been illegal per se were intended to serve the personal political purposes of the President, not any national policy objective. They were often directed at people whose sole offense was their constitutionally protected political views. The fruits of the intelligence-gathering were provided to the President's political aides and in at least one instance used by them for political purposes. The committee could conclude that these activities constituted an abuse of the powers of the Office of the President.

II

Special Investigations Unit

There is evidence that the President

encouraged and approved actions designed to provide information that would be used to discredit Daniel Ellsberg, the peace movement, the Democratic party, and prior Administrations. These actions included the break-in at the office of Dr. Lewis Fielding, Ellsberg's psychiatrist. There is also evidence that in aid of this information-gathering program the President authorized activities by the Central Intelligence Agency that violated its statutory charter.

In the week following the June 13, 1971, publication of excerpts from a top-secret Defense Department study of the history of American involvement in Vietnam (the "Pentagon papers"), the President authorized the creation of a special investigations unit within the White House. He has stated that the mission of the unit, which became known as the "plumbers," was to investigate security leaks and prevent future leaks. The President has also stated that the first priority for the plumbers was the investigation of Daniel Ellsberg, who was under Federal indictment for the theft of the Pentagon Papers.

Documents written at the time of the formation of the plumbers, however, show that the Pentagon Papers matter was viewed primarily as an opportunity to discredit Ellsberg, the peace movement, the Democratic party and prior Administrations. In a memorandum to Haldeman dated June 25, 1971, Colson wrote that it was important to keep the Pentagon Papers issue alive because of their value in evidencing the poor judgment of prior Democratic Administrations, thus working to the disadvantage of most Democratic candidates. The memorandum made no mention of any effect on national security of the disclosure of the Pentagon papers, but said that the greatest risk to the Administration would be to get caught and have its efforts become obvious.

Patrick Buchanan, in declining to serve as the person responsible for the project, wrote in a memorandum to John Ehrlichman dated July 8, 1971, that the political dividends would not justify the magnitude of the investigation recommended for "Project Ellsberg." He referred to the investment of "major personnel resources" in a "covert operation" over a three-month period timed to undercut the McGovern-Hatfield opposition by linking the theft of the Pentagon papers with "ex-NSC types," "leftist writers" and left-wing papers."

John Ehrlichman's handwritten notes taken during meetings with the President in June and July, 1971, confirm that the President viewed the prosecution of Ellsberg not principally as a national security matter, but with a view toward gaining a public relations and political advantage.

On June 17 under the designation [Greek letter Pi] (Ehrlichman's symbol for the President), Ehrlichman noted: "Win PR, not just court case." And on June 19, the notes state, "Win the case but the NB thing is to get the public view right. Hang it all on LBJ."

On June 23, 10 days after publication of the Pentagon papers and several weeks before the organization of the plumbers, the notes show that Secretary of Defense Laird advised the President and Ehrlichman that 98% of the Pentagon papers could have been declassified. This was acknowledged on July 1 when the President said, according to the notes, "Espionage—not involved in Ellsberg case," and "don't think in terms of spies." The President advised Ehrlichman to read the Alger Hiss chapter in the President's book, Six Crises, observing "It was won in the press." At the same meeting Ehrlichman wrote, "Leak stuff out—This is the way we win."

On July 6 [President] to JM; "Must be tried in the papers. Not Ellsberg (since already indicted). Get conspiracy smoked out thru the papers. Hiss and Bently cracked that way." During the same conversation, Ehrlichman wrote: "[President] Leak the [evidence] of guilt." The President also asked, "put a [nonlegal] team on the conspiracy?" The July 9 notes reflect the assignment of David Young "to a special project." The over-all goal of the Ellsberg matter was set out in Ehrlichman's notes of July 10: "Goal—Do to McNamara, Bundy, JFK elite the same destructive job that was done on Herbert Hoover years ago."

At the recommendation of Charles Colson, E. Howard Hunt was hired by the White House as of July 6. Hunt was asked to assure that the portions of the Pentagon papers being published included information derogatory to Democratic administrations. In a July 1 telephone conversation Colson asked Hunt if the Pentagon papers could be turned into a major public case and Ellsberg and his co-conspirators could be tried in the newspapers. Hunt said yes.

On July 7, after Ehrlichman was introduced to Hunt by Colson, Ehrlichman called C.I.A. Director Robert Cushman and said:

"I want to alert you that an old acquaintance, Howard Hunt, has been asked by the President to do some special consultant work on security problems. He may be contacting you sometime in the future for assistance. I wanted you to know that he was in fact doing some things for the President. He is a long-time acquaintance with the people here. He may want some help on computer runs and other things. You should consider he has a pretty much carte blanche."

While denying any recollection of this telephone call, which was transcribed by Cushman's secretary, Ehrlichman has testified that the President authorized enlisting the aid of the C.I.A. in the activities of the plumbers and that his only contacts with the C.I.A. were at the direction of the President.

On the weekend of July 17, Ehrlichman recruited David Young and Egil Krogh as co-chairmen of the plumbers. During the following week, G. Gordon Liddy and Hunt joined the unit. Krogh and Young were told to report to Ehrlichman, the President's domestic affairs adviser. Colson was given the task of publicly disseminating the material acquired by the unit in the course of its investigation. The organizational chart of the unit shows that the group intended to accumulate data from the various agencies and executive departments, pass it through Ehrlichman to the President, and make it available to the press and to any Congressional hearings.

Hunt began receiving assistance from

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the C.I.A. on July 22, when the C.I.A. provided him with alias identification and disguise materials. This assistance was in excess of the statutory jurisdiction of the C.I.A. On July 28 Hunt sent a memorandum to Colson suggesting that the C.I.A. be asked to supply a psychological profile on Ellsberg. The memorandum also suggested that the files on Ellsberg be obtained from his psychiatrist, for use in destroying Ellsberg's public image and credibilty. Young subsequently requested such a profile from the C.I.A.'s Director of Security and the Director of the C.I.A. himself, stressing the high level of interest of Ehrlichman in the project. The profile, the only one ever prepared by the C.I.A. on an American civilian, was delivered to the White House on Aug. 11. The C.I.A. staff psychiatrist involved in the profile met with the plumbers on Aug. 12 and Young requested that the profile be further developed.

The plumbers had been informed that the F.B.I. failed on July 20 and 26 to get the cooperation of Daniel Ellsberg's psychiatrist. On or about Aug. 5, Krogh and Young informed Ehrlichman of the F.B.I.'s failure to cooperate fully in the Ellsberg investigation and Krogh recommended that Hunt and Liddy be sent to California to complete the Ellsberg investigation. Ehrlichman stated that he discussed with the President the conversation with Krogh and the F.B.I.'s failure to cooperate and that he passed on the President's instruction to Krogh that he should do whatever he considered necessary. Ehrlichman has testified that the President approved the recommendation that the unit become operational and approved a trip by Hunt and Liddy to California to get "some facts which Krogh felt he badly needed. . . ."

On Aug. 11 Krogh and Young made a written recommendation for a covert operation to obtain the files of Ellsberg's psychiatrist because the C.I.A. psychological profile received that day was unsatisfactory. Ehrlichman initialed his approval. The only qualification Ehrlichman imposed was an assurance that it not be traceable to the White House.

Hunt and Liddy made a reconnaissance trip to California to inspect Dr. Fielding's office, equipped with alias identification, disguise materials and a camera provided by the C.I.A., which also developed the photographs taken there. On Aug. 30, 1971, after Hunt and Liddy reported that their reconnaissance satisfied them that an entry operation was feasible, Krogh and Young have testified that they called Ehrlichman and told him that they believed an operation was possible that could not be traced to the White House, and Ehrlichman gave his approval.

The break-in of Dr. Fielding's office was carried out over the Labor Day weekend of Sept. 3 and 4, by a team under the direction of Hunt and Liddy. The operation was financed by Colson, who borrowed $5,000 in cash from a Washington public relations man, and repaid him with a $5,000 political contribution Colson solicited from the dairy industry. It remains uncertain whether the burglary netted any information about Ellsberg, in light of conflicting testimony by the burglars and Dr. Fielding.

On Sept. 8 Ehrlichman met with Krogh and Young and later with the President. On Sept. 10 he went directly from a meeting with the President to meet with Krogh and Young.

The President's concern with the Ellsberg case was not with espionage or national security, but with politics and public relations. He discussed with Colson disseminating to the press derogatory information about Leonard Boudin, Ellsberg's attorney. A memorandum by Hunt on Boudin was subsequently leaked. The plumbers hoped to find damaging material about Ellsberg in the psychiatric records that could be incorporated into a media and Congressional publicity campaign. When the break-in at Dr. Fielding's office produced no usable material, they again asked the C.I.A. for a follow-up psychological profile of Ellsberg. The C.I.A. resisted attempts to produce a second profile. Internal C.I.A. memoranda demonstrate that the staff was opposed to preparing the profile because it was beyond the agency's jurisdiction and the staff was suspicious of the use that might be made of the profile. The affidavit of the staff psychiatrist who directed the efforts concluded that the purpose was to defame or manipulate Ellsberg. Despite the resistance, a second profile was written and delivered to Helms who directed its delivery to the White House. Helms sent a separate letter to David Young expressing the

C.I.A.'s pleasure in being of assistance but impressing upon Young the importance of concealing the C.I.A.'s involvement.

The plumbers had no police powers or statutory authority; indeed their existence was kept secret until 1973, after they had ceased functioning. Their primary purpose—to discredit Daniel Ellsberg for the President's political advantage—violated Ellsberg's constitutional right to a fair trial on the criminal charges against him; it interfered with the fair administration of justice. On June 3, 1974, Charles Colson pleaded guilty to obstructing the trial of Daniel Ellsberg by carrying out the plan to publicly discredit Ellsberg.

The Fielding break-in, conducted by agents of the plumbers, also was a violation of Dr. Fielding's constitutional rights and at least one Federal civil rights law. The President's chief domestic aide, John Ehrlichman, has been convicted of this offense. The committee could conclude that the break-in was a natural and foreseeable consequence of activities authorized by the President.

The use of the Central Intelligence Agency to prepare the psychological profiles of Ellsberg and to provide materials for Hunt's use in the Ellsberg project (as well as political intelligence-gathering by Hunt) involved the misuse of the President's power as Chief Executive. The C.I.A. has no authority to engage in domestic activities. Indeed, its jurisdiction is expressly limited by statute to prohibit its involvement in domestic intelligence-gathering.

III

Concealment of the Evidence of Intelligence-Gathering Activities

There is evidence that the President directed and engaged in activities to prevent the revelation of the 1969-1971 wiretaps and the Fielding break-in, including concealment of the wiretap records, creation of a national security justification for the Fielding break-in and ordering Assistant Attorney General Petersen not to investigate the break-in on the basis of this justification, and the offer of the position of director of the F.B.I. to the presiding judge in the Ellsberg trial. In addition, as discussed in previous sections of this memorandum, the President's desire to conceal the Fielding break-in was one of the purposes for the Watergate cover-up and a specific objective of the payment of money to Hunt.

A. Concealment of Records of the 1969-71 Wiretaps.

When the F.B.I. conducts national security wiretaps, it normally maintains a central file and indexes of the records of the taps so that the names of persons overheard are retrievable for production in a criminal trial. The F.B.I. was expressly ordered by Haig, "on the highest authority," not to maintain records of the wiretaps initiated under the President's 1969 authorization.

In June, 1971, publication of the Pentagon papers began, and on June 28 Daniel Ellsberg was indicted in connection with their release. On July 2 the Internal Security Division of the Justice Department, which had responsibility for the Ellsberg prosecution, asked the F.B.I. to check its files to determine if Ellsberg had been overheard on any electronic surveillance.

Morton Halperin's telephone had been tapped for 21 months and Ellsberg had been overheard on it 15 times. Shortly after the Internal Security Division had requested the F.B.I. check of its files, Assistant F.B.I. Director William Sullivan informed Assistant Attorney General Robert Mardian, the head of the Internal Security Division, that he had custody of the files and logs of the 1969-1971 wiretaps, that he expected to be forced out of the F.B.I. by Director Hoover and that he desired to turn the wiretap records over to Mardian. Mardian has testified that Sullivan said he feared Hoover would use the wiretap material to pressure the President to keep him on as Director of the F.B.I.

Mardian sought advice from Attorney General Mitchell and then contacted the White House. He was instructed to fly to San Clemente to discuss the matter with the President. John Ehrlichman's notes of a July 10 meeting with the President include: "Re: Grand Jury — Don't worry re taps on discovery — re WH." (John Ehrlichman handwritten notes of meetings with the President, received from the Special Prosecutor, July 15, 1974).

On July 12, Mardian met with the President and Ehrlichman at San Clemente (John Ehrlichman logs, July 12, 1971) and the President directed Mardian to obtain the logs and files from Sullivan and to deliver them to the White House.

Mardian delivered the wiretap files to the Oval Office of the White House, but he has refused to say to whom he actually delivered them. Ehrlichman has testified that the President ordered him to take possession of the files and that he picked up the documents in the Oval Office and placed them in a filing cabinet in his office, where they remained until April 30, 1973, when they were removed from his office and filed with Presidential papers.

As a result of the concealment of the wiretap logs and files at the direction of the President, the Government filed three false affidavits in the Ellsberg trial denying that there had been electronic surveillance or overhears of Ellsberg or Halperin.

In February, 1973, the White House learned of a forthcoming Time magazine story disclosing the existence of wiretaps on White House employes and newsmen. John Dean, who had learned of the files from Mardian, investigated the Time story by contacting Assistant F.B.I. Director Mark Felt, Sullivan and Mardian. Each confirmed the existence of the wiretaps and Mardian said that he had delieverd the files to Ehrlichman. Ehrlichman told Dean that he had the files, but directed Dean to have Press Secretary Ronald Ziegler deny the story. The Time article, published on Feb. 26, stated that a "White House spokesman" had denied that anyone at the White House had authorized or approved any taps on White House employes or newsmen. On Feb. 28, Dean reported to the President on the Time story and his meeting with Sullivan about the wiretaps. Dean told the President that the White House was "stonewalling totally" on the wiretap story and the President replied, "Oh, absolutely."

The following day Acting F.B.I. Director L. Patrick Gray publicly testified before the Senate Judiciary Committee in his confirmation hearings for the position of Director of the F.B.I. that F.B.I. records did not reveal any such taps and that, as a result of the White House denial of their existence, he had not investigated the matter further.

The White House continued to deny the existence of the wiretaps and the files and logs remained in Ehrlichman's safe until May, 1973. On May 9 Acting F.B.I. Director William Ruckelshaus received a report that an F.B.I. employe recalled hearing Ellsberg on a wiretap three years earlier. Ruckelshaus reported this information to Assistant Attorney General Henry Petersen, who forwarded it to Judge Matthew Byrne, who was presiding over the Ellsberg trial. Petersen also informed Judge Byrne that the logs could not be located and there were no records of the date, duration, or nature of the wiretap. Judge Byrne ordered an immediate investigation. On May 10 the F.B.I. interviewed Mardian, who revealed that he had delivered the records to the White House. Ehrlichman could not be located until the following day. Two hours before Ehrlichman was interviewed, Judge Byrne dismissed all charges against Ellsberg and his co-defendant on the basis of misconduct by the Government, specifically including the failure of the Government to produce the wiretap records.

B. Concealment of the Plumbers' Activities.

The President's objective in authorizing the plumbers' activities, as described above, was to obtain information to discredit Ellsberg, the peace movement, the Democrats and past Administrations. Following the Watergate break-in the President initiated a policy of keeping Federal investigations away from discovering the plumbers' activities, repeatedly using a national security justification for that purpose. On June 23, 1972, the President directed Haldeman to discuss with Ehrlichman, C.I.A. Director Helms, and Deputy C.I.A. Director Walters the possible disclosure of the plumbers' activities. Ehrlichman and Dean subsequently directed F.B.I. and Justice Department personnel to concentrate on the Watergate burglars themselves and attempted to prevent interviews and investigations of individuals who could reveal the plumbers' activities.

In March and April, 1973, when the White House was seeking to prevent disclosure of White House involvement in Watergate, the added threat of Hunt to reveal the Fielding break-in surfaced. John Dean reported to the President on March 17 that Hunt and Liddy had broken into Ellsberg's doctor's office.

On March 21, Dean and the President discussed Hunt's threats against Ehrlichman arising from Hunt's knowledge of the Fielding break-in. Dean told the President that Hunt and Liddy were totally aware of the fact that the authorization came right from the White House and the President said, "I don't know what the hell we did that for." Dean said, "I don't either."

Later in the same conversation, Dean conceived the idea of using an excuse of "national security" to cover the break-in:

PRESIDENT: You see, John is concerned, as you know, Bob, about, uh, Ehrlichman, which, uh, worries me a great deal because it's a, uh, it—and it, and this is why the Hunt problem is so serious, uh, because, uh, it had nothing to do with the campaign.

DEAN: Right, it, uh—

PRESIDENT: Properly, it has to do with the Ellsberg thing. I don't know what the hell, uh—

HALDEMAN: But why—

PRESIDENT: Yeah. Why — I don't know.

HALDEMAN: What I was going to say is—

PRESIDENT: What is the answer on that? How do you keep that out? I don't know. Well, we can't keep it out if Hunt—if—You see the point is, it is irrelevant. Once it has gotten to this point—

DEAN: You might, you might put it on a national security ground, basis, which it really, it was.

HALDEMAN: It absolutely was.

DEAN: And just say that, uh,

PRESIDENT: Yeah.

DEAN: that this is not, you know, this was—

PRESIDENT: Not paid with C.I.A. funds.

DEAN: Uh—

PRESIDENT: No, seriously. National security. We had to get information for national security grounds.

DEAN: Well, then the question is, why didn't the C.I.A. do it or why

didn't the F.B.I. do it?

PRESIDENT: Because they were—We had to do it, we had to do it on a confidential basis.

HALDEMAN: Because we were checking them?

PRESIDENT: Neither could be trusted.

HALDEMAN: Well, I think

PRESIDENT: That's the way I view it.

HALDEMAN: that has never been proven. There was reason to question their

PRESIDENT: Yeah.

HALDEMAN: position.

PRESIDENT: You see really, with the Bundy thing and everything coming out, the whole thing was national security.

DEAN: I think we can probably get, get by on that.

Dean told the President that Ehrlichman had potential criminal liability for conspiracy to burglarize the Fielding office. They needed protection if, as the President put it, Hunt "breaks loose," and they sought it by invoking "national security."

In a meeting that afternoon, Ehrlichman told the President what he would say if Hunt were to reveal the existence of the Fielding break-in. At the conclusion of Ehrlichman's statement, he said, "Now, I suppose that lets Ellsberg out, that's an illegal search and seizure that may be sufficient at least for a mistrial, if not for a. . . ." The President asked whether the Ellsberg case was about to end and Ehrlichman said that it would go on for a while yet. They discussed the possibility that the case against Ellsberg could be dismissed even after a conviction if the existence of the break-in were to come to light. Ehrlichman also said that the question was, "Did we, did we authorize it, did we condone it." The President responded, "Yeah." Although the national security defense was created in these discussions on March 21, the President was told that it could not be a defense to criminal liability and that the prosecution of Ellsberg would be dismissed as a result of this illegal search and seizure.

On March 27, 1973, the President and Ehrlichman were discussing whether it would be necessary for Krogh to take responsibility for the Fielding break-in and Ehrlichman said he did not believe it would be necessary because if it came to light he would "put the national security tent over this whole operation." The President agreed with Ehrlichman's recommendation to hard-line it.

In April, the President actively participated in an effort to implement the plan agreed upon with his aides. In a conversation with Attorney General Kleindienst on April 15, the President told Kleindienst that the "deep six thing" related to some of Hunt's operations in the White House on national security matters and had nothing to do with Watergate. On April 16 the President was advised by Henry Petersen that the Department of Justice had information that Hunt had received documentation and a camera from the C.I.A. The President told Petersen that such action was perfectly proper because Hunt was conducting an investigation in the national security area for the White House at that point in time.

In a meeting with Haldeman and Ehrlichman on April 17, 1973, the President told them that he had instructed Dean not to discuss these other areas (including the Fielding break-in) because they were national security and privileged and that Dean had agreed. The President said that it would be necessary to instruct Petersen that these were matters of national security and were subject to executive privilege and that Petersen should be instructed to pass the word down to the prosecutors.

The President ordered the Department of Justice not to investigate the allegations surrounding the break-in of the office of Daniel Ellsberg's psychiatrist in a telephone conversation with Petersen on the evening of April 18, 1973. Petersen advised the President that the Justice Department had learned that Hunt and Liddy had burglarized Ellsberg's psychiatrist's office and Petersen asked if he knew about it. The President said he knew about it and that Petersen was to stay out of it because it was national security and Petersen's mandate was Watergate. Petersen asked the President if the President had any information relating to these allegations and the President said no and that there was nothing for Petersen to do. On April 27, the President reminded Petersen of the resident's call from Camp David on April 18 in which, according to the President, to told Petersen not to go into "the national security stuff." The President told Petersen on April 27 that Petersen's phone call of April 18 was the first knowledge the President had of the Fielding break-in.

On April 25 Attorney General Kleindienst told the President that he knew of the Fielding break-in and recommended that the fact be revealed to Judge Byrne at the Ellsberg trial. Kleindienst described the President as being upset at that meeting, but agreeing that the information about the break-in should be transmitted to Byrne. On April 26, memoranda regarding the break-in were filed in camera with Judge Byrne. He later reconvened the court and asked the Government's position as to turning the materials over to the defendants. On the next morning Judge Byrne was informed that the Department of Justice did not want the contents of the in camera filing disclosed to the defense. Judge Byrne nevertheless ordered the information to be supplied to the defense.

On May 11, 1973, the charges against Ellsberg were dismissed by Judge Byrne on the grounds of governmental misconduct, including the plumbers' use of C. I. A. equipment and the psychological profile, the Fielding break-in, and the inability of the government to produce logs of wiretaps on which Ellsberg's voice was intercepted.

C. The Offer of the Position of F.B.I. Director to Judge Byrne

On April 5, 1973, at the direction of the President, Ehrlichman contacted Judge Matthew Byrne, who was then presiding in the Ellsberg trial, and asked whether Byrne would be interested in becoming the Director of the F.B.I. Byrne met with the President briefly at the time, but they did not discuss the trial or the nomination.

As has been noted above, at that time the President was concerned that the Fielding break-in and other plumbers' activities might be revealed, and he had decided that the matter would be cloaked in "national security." On March 28 Hunt had been given use immunity, and had begun testifying before the Grand Jury. Liddy was granted immunity on March 30. The President may have thought it likely that their testimony would expose the Fielding break-in, which would then be disclosed to Judge Byrne, since it affected a defendant in his court. In addition, the President was probably concerned with disclosure of the 1969-71 wiretaps, which he had authorized and which had been reported by Time magazine on Feb. 26.

Although there had been repeated court orders for the production of any electronic surveillance material on both Ellsberg and Morton Halperin because of the removal and concealment of the files in the White House, the Justice Department had filed three false affidavits denying the existence of overhears or surveillance of Halperin and Ellsberg. Only a month before the offer was made to Judge Byrne, the President agreed with John Dean that the White House should "stonewall totally" on the existence of these wiretaps after the Time magazine story.

The potential motives for this offer to Byrne which may be inferred from the evidence are complex. The conclusion most likely from the evidence is that Byrne was in a unique position to protect the President from damage resulting from disclosure of the Fielding break-in and the 1969-71 wiretaps. Byrne, if he accepted the "national defense" justification, could have held the matters in camera, could have minimized their impact or could have excused them entirely. The offer to him of the directorship of the agency that conducted the taps could be concluded to have been intended not only to make him friendly to the Administration in a general sense, but to have been designed to give him a direct stake in protecting the F.B.I. from damaging disclosures.

The President's concealment of the wiretap records and the Fielding break-in involved a number of abuses of his powers as chief executive. Obtaining and concealing the wiretap records prevented the Justice Department from performing its duty to the court in the Ellsberg trial. His failure to reveal the Fielding break-in, his fabrication of a national security justification for it and his orders to Petersen not to investigate it also impeded the Justice Department in the performance of its duty to the court.

Under all these circumstances the President's offer of the position of F.B.I. director to Judge Byrne raises serious concern that it was made in bad faith to induce Judge Byrne not to reveal the wiretaps or the break-in.

There is no question that the President directed these activities. He ordered the concealment of the wiretap records at the White House; he ordered Petersen not to investigate; he directed Ehrlichman to convey the offer to Byrne. The purpose of these actions, the committee could conclude, was to conceal political embarrassing information about illegal and improper White House activity. The committee could conclude that this conduct was a serious breach of his responsibilities as President.

IV
Misuse of the Internal Revenue Service

The evidence before the committee demonstrates that the power of the office of the President was used to obtain confidential tax return information from the Internal Revenue Service and to endeavor to have the I.R.S. initiate or accelerate investigations of taxpayers.

A. Wallace Tax Investigation

In early 1970 Haldeman directed Special Counsel to the President Clark Mollenhoff to obtain a report from the I.R.S. about its investigation of Alabama Governor George Wallace and his brother, Gerald, and assured Mollenhoff that the report was for the President. Mollenhoff requested a report of Commissioner Thrower, received it, and gave it to Haldeman. Material contained in the report was thereafter transmitted to Jack Anderson, who published an article about the I.R.S. investigation of George and Gerald Wallace on April 13, 1970, during George Wallace's Alabama gubernatorial primary campaign.

B. List of McGovern Supporters

During 1971 and 1972 lists of political opponents and "enemies" were circulated within the White House. On Sept. 11, 1972, Dean, at the direction of Ehrlichman, gave a list of McGovern campaign staff and contributors to I.R.S. Commissioner Walters and asked that the I.R.S. investigate or develop information about the people on the list. Walters warned Dean that compliance with the request would be disastrous and told him he

would discuss it with Treasury Secretary Shultz and advise that the I.R.S. do nothing. Two days later Walters and Shultz discussed the list and agreed to do nothing with respect to Dean's request.

On Sept. 15 Haldeman informed the President that Dean was "moving ruthlessly on the investigation of McGovern people, Kennedy stuff, and all that too." Haldeman said that he didn't know how much progress Dean was making, and the President interrupted to say, "The problem is that's kind of hard to find." Haldeman told the President that Colson had "worked on the list" and Dean was "working the, the thing through I.R.S." Later, Dean joined the meeting, and there was a discussion of using Federal agencies to attack those who had been causing problems for the White House.

They also discussed the reluctance of the I.R.S. to follow up on complaints and Dean informed the President of his difficulties in requesting Walters to commence audits on people. The President became annoyed and said that after the election there would be changes made so that the I.R.S. would be responsive to White House requirements. The President also complained that Treasury Secretary Shultz had not been sufficiently aggressive in making the I.R.S. responsive to White House requests. Because of his conversation with the President, Dean again contacted Walters about the list, but Commissioner Walters refused to cooperate.

C. O'Brien Investigation

During the spring or summer of 1972, John Ehrlichman received an I.R.S. report concerning an investigation of Howard Hughes's interests that included information about Democratic National Committee Chairman Lawrence O'Brien's finances. Ehrlichman later obtained information from Assistant to the Commissioner Roger Barth about O'Brien's returns. Ehrlichman also told Shultz that the I.R.S. should investigate and interview O'Brien about his tax returns. Ehrlichman's demand caused the I.R.S. to accelerate an interview of O'Brien in connection with the Hughes investigation (normally an interview of a politically prominent person like O'Brien would have been held in abeyance until after the election), and to intensify its investigation of O'Brien.

The evidence suggests that about Sept. 5, Walters gave Shultz figures concerning O'Brien's tax returns, which Shultz was to give to Ehrlichman. On Sept. 10, Ehrlichman gave Kalmbach figures about O'Brien's allegedly unreported income and requested that Kalmbach plant the information with the press. Kalmbach refused to do so, despite subsequent requests by Ehrlichman and Mitchell. On Sept. 15, during the meeting among the President, Haldeman and Dean, the I.R.S. investigation of O'Brien was discussed.

D. Other Tax Information

From time to time in 1971 and 1972, a member of Dean's staff obtained confidential information about various people from the I.R.S. and, at the request of Haldeman and under Dean's direction, endeavored to have audits conducted on certain persons.

On March 13, 1973, during a conversation among the President, Haldeman and Dean, they discussed campaign contributions to the McGovern campaign. The President asked Dean if he needed "any I.R.S. stuff." Dean responded that he did not at that time. Dean said, "[We] have a couple of sources over there that I can go to. I don't have to fool around with [Commissioner] Johnnie Walters, or anybody, we can get right in and get what we need."

This use of the I.R.S. is an abuse of the powers granted to the President by the Constitution to superintend the agencies of the executive branch. The Constitution entrusts that power to the President with the understanding that it will be used to serve lawful ends, not the personal political ambitions of the President. This misuse of power is a challenge to the integrity of the tax system, which requires taxpayers to disclose substantial amounts of sensitive personal information. It is also a crime to interfere with the administration of the internal revenue laws, and to divulge confidential information. This policy of using the I.R.S. for the President's political ends is an abuse of office and may be deemed by the committee to constitute a violation of the President's duty to take care that the laws are faithfully executed.

The committee could conclude that attempts to bring about political discrimination in the administration of the tax laws—to have them "applied and administered with an evil eye and unequal hand" to use the classic test of discriminatory enforcement of the laws—is a serious abuse of the President's power and breach of his duty as chief executive.

V
Kleindienst Appointment—ITT

In 1969 three antitrust suits were filed by the United States against the International Telephone and Telegraph Corporation (I.T.T.), each seeking to prevent a corporate acquisition or to require a corporate divestiture. During 1970 and 1971, particularly in August of the former year and March and April of the latter, officials of I.T.T. made numerous personal contacts and had substantial correspondence with Administration officials for the purpose of attempting to persuade the Administration that the suits should be settled on a basis consistent with the interests of I.T.T.

On April 19 the President, in the course of a meeting with John D. Ehrlichman and George P. Shultz, telephoned Deputy Attorney General Kleindienst. The President ordered Kleindienst to drop an appeal pending before the Supreme Court in one of the antitrust suits. He criticized Antitrust Division chief McLaren and said that, if the order to drop the appeal was not carried out, McLaren was to resign.

On April 21 the President met with Attorney General Mitchell. In this meeting, Mitchell stated that it was inadvisable for the President to order that no appeal be taken in the Grinnell case, because there would be adverse repercussions in Congress and Solicitor General Griswold might resign. The President agreed to follow the Attorney General's advice, and the appeal was subsequently filed.

During June the Antitrust Division proposed a settlement of the three I.T.T. antitrust cases, which was accepted by I.T.T. The final settlement was announced on July 31.

On Feb. 15, 1972, the President nominated Richard G. Kleindienst to be Attorney General to succeed John Mitchell, who was leaving the Department of Justice to become head of C.R.P. The Senate Judiciary Committee held hearings on the nomination and recommended on Feb. 24 that the nomination be confirmed.

On Feb. 29 the first of three articles by Jack Anderson relating to the settlement of the I.T.T. suits was published, alleging a connection between a pledge by an I.T.T. subsidiary to support thet 1972 Republican convention and the antitrust settlement. The article reported that both Mitchell and Kleindienst had been involved. Kleindienst immediately asked that the Senate Judiciary Committee hearings on his nomination be reopened so he could respond to the allegations.

About March 1, as a result of information published in the Anderson column, the Securities and Exchange Commission demanded that I.T.T. turn over any documents in the files of I.T.T.'s Washington office within the scope of subpoenas previously issued. Within the files of I.T.T.'s Washington office were several documents that reflected I.T.T. contacts with the Administration in 1970 and 1971 and would have been embarrassing to the Administration if disclosed. On March 2, the first day of the resumed Kleindienst nomination hearings, attorneys for I.T.T. gave copies of one or more of these documents to White House aide Wallace Johnson, who gave them to Mitchell. The following week others of these documents were also furnished to Johnson. Later, during March and April, copies of the documents were provided by I.T.T. attorneys to the S.E.C.

During the first day of the resumed Kleindienst hearings, March 2, 1972, and again on the following day, Kleindienst denied under oath having received directions from the White House about the handling of the I.T.T. cases. On March 3 Kleindienst also was asked by Senator Edward Kennedy about the extension of time to appeal the Grinnell case, which had in fact and to Kleindienst's knowledge resulted from the President's April 19, 1971, telephone call to Kleindienst. Kleindienst responded:

> Senator Kennedy, I do not recollect why that extension was asked.

Four days later, Kleindienst read a prepared statement describing in detail circumstances surrounding the request for an extension. There was no mention of the President's telephoned order to drop the case.

The President and Haldeman returned from a five-day stay in Key Biscayne on March 5. The next day, immediately after meeting with the President and Haldeman, Ehrlichman met with S.E.C. Commissioner Casey. Evidence before the committee tends to establish that it was at this meeting that Ehrlichman expressed concern about documents relating to I.T.T. contacts with the Administration that I.T.T. lawyers had collected and were about to furnish to the S.E.C.

At about this time the President established a White House task force to monitor the Kleindienst nomination and hearings; the task force operated throughout the month.

On March 14, John Mitchell appeared before the Senate Judiciary Committee. He twice testified that there had been no communication between the President and him with respect to the I.T.T.

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antitrust litigation or any other antitrust litigation. That evening Mitchell had a telephone conversation with the President.

On March 24 the President held his only press conference during this period. He said:

> . . . as far as the [Senate Judiciary Committee] hearings are concerned, there is nothing that has happened in the hearings to date that has in one way shaken my confidence in Mr. Kleindienst as an able, honest man, fully qualified to be Attorney General of the United States.

The President refused to comment on any aspect of the hearings "while the Senate is still conducting them . . . and is still trying to determine the authenticity of the evidence that is before it." He said it was a matter for the committee "to continue to consider" but expressed the opinion Kleindienst would "go in as Attorney General with no cloud over him" when the hearings were concluded.

Colson has testified before the committee that during the period of the

Kleindienst hearings he attended a meeting with the President and Haldeman and heard them briefly discuss the telephone call between the President and Haldeman on April 19, 1971. According to Colson the President expressed relief when told by Haldeman that they had not discussed the I.T.T. case. Colson testified further that he met with the President throughout March and discussed with him what Colson knew about the Kleindienst hearings and related events, but not specific testimony.

According to Colson, on March 27 and 28, the President discussed with Haldeman, Colson and MacGregor whether the Kleindienst nomination should be withdrawn. On the morning of March 30, according to Colson, Haldeman told him and MacGregor that the President had met with Kleindienst and talked with Mitchell by telephone the day before, and had decided not to withdraw the nomination. After meeting with Haldeman, Colson wrote a memorandum addressed to Haldeman stating disagreement with continuing the Kleindienst nomination. His reasons included the possibility that documents Colson had reviewed would be revealed and show that the President had a meeting with Mitchell about the I.T.T. case in 1971 and would contradict statements made by Mitchell under oath during the Kleindienst hearings. Colson testified that, assuming normal White House practice was followed, the President received this memorandum.

On April 4, 1972, the President, Haldeman and Mitchell met and discussed among other things changing the convention site from San Diego to Miami. A White House-edited transcript of this conversation has been supplied to the committee.

On April 25 the chairman of the Senate Judiciary Committee requested access to I.T.T. documents in the possession of the S.E.C. Had the S.E.C. complied, the Senate Judiciary Committee would have received and been able to review documents previously collected by I. T. T. attorneys and turned over to the S.E.C. reflecting efforts by I.T.T. to obtain favorable treatment from the Administration with respect to the I.T.T. cases. Chairman Casey, who had previously discussed the documents with Ehrlichman, refused Chairman Eastland's request.

On April 27, Kleindienst testified that no one in the White House had called him and instructed him on the handling of the I.T.T. case. On June 8 Kleindienst's nomination was confirmed. At this swearing-in ceremonies on June 12, the President expressed his great confidence in Kleindienst's honesty, integrity and devotion to law. He said that the Senate confirmation proceedings had in no way reduced that confidence.

Article II, section 2 of the Constitution provides that the President "shall nominate, and, by and with the advice and consent of the Senate, appoint" certain officers established by law whose appointments are not otherwise provided for by the Constitution. The Attorney General of the United States is among the officers nominated by the President and appointed by him with the advice and consent of the Senate. The right of advise and consent is one of the key checks the legislative branch has over the power of the President. There is no surer way to frustrate this constitutional safeguard than for the President or others in the executive branch to permit perjury to be conducted or evidence withheld in connection with the confirmation process.

In this connection the statement before the North Carolina Constitution convention by James Iredell, later a Supreme Court Justice, is noteworthy. In the context of the treaty-making power, where (as with nominations to office) the Senate's role is to advise and consent, Iredell said, the President "must certainly be punishable for giving false information to the Senate." It would be an impeachable misdemeanor, Iredell contended, if "he has not given them full information, but has concealed important intelligence which he ought to have communicated, and by that means induced them to enter into measures injurious to their country, and which they would not have consented to had the true state of things been disclosed to them"

The two primary factual questions are whether the President knew about Kleindienst's and Mitchell's false testimony before the Senate Judiciary Committee and whether the President remembered the nature of the telephone conversation with Kleindienst and discussion with Mitchell 10½ months before. Given the strident tone of the telephone call, the fact that the conversation with Mitchell caused the President to rescind his order, the extensive press coverage of the Kleindienst hearings, the personal interest that the President took in them, the existence of a Whtie House task force whose job it was to monitor the progress of the nomination hearings, and the observation in Colson's March 30 memorandum to Haldeman that there existed evidence contradicting Mitchell's sworn testimony, it would appear likely that the President had such knowledge.

Yet Colson had testified that the President was assured by Haldeman (who had not overheard either critical conversation between the President and Kleindienst or Mitchell) that the President had not discussed the I.T.T. case with Kleindienst. And Colson has testified that he did not discuss in detail with the President the testimony before the Judiciary Committee. Evidence exists in the tape recordings of key Presidential conversations that would probably enable the committee to determine the facts. But the President has refused to comply with the committee's subpoena for such tapes.

If the President had knowledge that false testimony had been given under oath by Kleindienst and Mitchell, he neither informed the Senate Judiciary Committee or the full Senate about the actual facts nor withdrew Kleindienst's nomination. Instead, at his March 24 press conference, he reiterated his confidence in Kleindienst's honesty and qualifications to be Attorney General, saying that nothing had happened in the hearings to shake that confidence in one way. After Kleindienst's nomination was confirmed, the President appointed him Attorney General.

VI

The Department of Agriculture

The Agriculture Adjustment Act of 1949 authorizes and directs the Secretary of Agriculture to make available an annual price support to producers of milk. Under the act as it applied in 1971 the price of milk was to be supported at such level, between 75 and 90 per cent of the parity price, "as the Secretary determine[d] necessary to provide an adequate supply." The statute further provides that the Secretary's determinations "shall be final and conclusive."

After detailed study and review in the Department of Agriculture, the Secretary decided by March 3, 1971, that the then current support price of $4.66 per cent, should be continued for the 1971 marketing year, which was to begin on April 1. This represented approximately 79 per cent of parity. The decision was reviewed and concurred in by officials of the Office of Management and Budget, economic advisers to the President, and members of the President's staff. The President approved the decision, and on March 12 the Secretary announced the milk price support and his determination that it assured an adequate supply of milk.

After the Secretary's decision was announced, a number of bills were introduced in Congress to increase the minimum level of price supports for milk to at least 85 per cent of parity, partially as a result of intense lobbying by certain milk producer cooperatives. Some 118 members of the House and 29 Senators sponsored these bills. Milk producer cooperatives engaged in further intense efforts to contact Administration officials and obtain a reversal of the Secretary's decision and an increase in milk price supports. They also determined to cancel plans to purchase $100,000 in tickets to a Republican fund-raising dinner.

On March 23, the President met in the morning with representatives of the dairy industry and thanked them for their past political support, which, as the President knew, had included financial contributions and pledges. In the afternoon, the President met with his advisers and directed that the milk price support levels be increased to approximately 85 per cent of parity. According to figures that O.M.B. had developed, the increase had a "budget cost" to the American taxpayer of approximately $60-million. The President directed that announcement of the decision be delayed while certain political and other contacts were made.

Then Secretary of Agriculture Clifford hardin has stated in an affidavit filed in a civil suit challenging the increased price support that the decision was based entirely on a reconsideration of the evidence on the basis of the statutory criteria. But the President has stated otherwise. The President has said that he was motivated largely by political considerations in directing the Secretary to increase the price support level.

Indeed, just 11 days earlier, the President had approved the Secretary's determination not to increase the support level, on the recommendation of his key economic policy advisers, based upon economic considerations.

In the deliberations leading to the March 23 decision, there is no evidence that new economic arguments or data with respect to the adequacy of the milk supply were considered. During the President's afternoon meeting on March 23 when the decision was reached, Treasury Secretary Connally, at the President's request, discussed in detail with concerned officials the politics of the decision.

The President was aware of past financial support from the dairy cooperatives and their pledge of $2-million to his re-election campaign. A memorandum sent to the President on March 22, 1971, reminded him that the dairy lobby had decided to spend a lot of political money. These considerations may also have influenced the decision to increase the price support level.

The committee could conclude from the evidence before it that the President, who is without statutory power to do so, ordered the increase on the basis of his own political welfare rather than the statutory criteria.

Evidence before the committee also suggests that the President directed or was aware of a plan to secure a reaffirmation of the milk producer's $2-million pledge to his re-election in return for the milk price support decision. The President's refusal to comply with the committee's subpoena has left the evidence incomplete as to whether the milk producer cooperatives' contributions were made with the intent to influence the President's official acts or whether the President acquiesced in their acceptance with this knowledge. If these elements were present, then the President's accept-

ance constituted bribery, whether or not the contributions actually influenced the price support decision.

VII

Improvements Made by Government Agencies to the President's Properties

On Dec. 19, 1968, the President purchased two houses at Key Biscayne, Fla. On July 15, 1969, he purchased a residence at San Clemente, Calif. Since that time, the General Services Administration (G.S.A.) has spent approximately $701,000 directly on the San Clemente property and $575,000 directly on the Key Biscayne property for capital expenses, equipment, and maintenance. Congress has recognized that the Secret Service may require the installation of security devices and equipment on the private property of the President or others to perform its mission of protecting the President.

The General Services Administration is authorized to make expenditures for this purpose at the request of the Secret Service. The General Services Administration is also authorized to provide services and administrative support to the Executive Office of the President.

Evidence before the committee establishes that substantial expenditures for improvements and maintenance services on the President's properties were made by G.S.A. that cannot be justified on the basis of the duty to protect the President.

Some of these expenditures were made by G.S.A. at the direction of the President or his representatives, with no Secret Service request. Others were made pursuant to Secret Service requests but included substantial amounts to meet aesthetic or personal preferences of the President and his family. Yet others, while they have served security purposes, involved items that are normally paid for by a homeowner himself, such as replacement of worn-out or obsolete equipment or fixtures and routine landscape maintenance.

The staff of the Joint Committee on Inernal Revenue Taxation concluded that more than $92,000 of expenditures on the President's properties was for his personal benefit and constituted income to him. The Internal Revenue Service concluded that the President had realized $62,000 in such imputed income.

Certain of the improvements were made at his express direction and others upon the instructions of John Ehrlichman. Many involved aesthetic choices that were likely to have been made by the President. Alexander Butterfield has testified before the Committee that the President was "very interested in the grounds at Key Biscayne, Camp David, San Clemente, the cottage, the house, the grounds."

The President knew of the improvements as they were being made from his visits to San Clemente and Key Biscayne, presumably he also knew that he was not personally paying for them. In any event, on Aug. 20, 1973, he received a specific breakdown of his personal expenditures at San Clemente and Key Biscayne, but to date has made no attempt to reimburse the Government for any expenditures for his personal benefit on these properties.

The committee could conclude that the President directed or knowingly received the benefit of improper expendtures on his San Clemente and Key Biscayne properties.

Article II, Section I, Clause 7 of the Constitution provides that the President shall not receive "any . . . emolument from the United States" during his term of office other than a stated compensation for his services. This explicit constitution prohibition applies solely to the President. It reflects the fear of the framers of the Constitution that "powers delegated for the purpose of promoting the happiness of a community" might be "perverted to the advancement of the person emoluments of the agents of the people." The committee could conclude that, by knowingly receiving the benefits of expenditures on his personal properties, the President violated this constitutional prohibition.

In addition, the Committee could conclude hat the President directed or caused the Secret Service and the G.S.A. to exceed their authority and to violate the constitutional provision by authorizing and making these expenditures.

CONCLUSION

There is evidence before the committee from which it may conclude that the President has used the powers of his office in an illegal and improper manner for his personal benefit. This evidence, especially in the area of intelligence-gathering, detmonstrates a continuing pattern of conduct, beginning soon after the President took office, of using the F.B.I., the C.I.A., the Secret Service and White House aides and agents to undertaket surveillance activities unauthorized by law and in violation of the constitutional rights of citizens. These activities were conducted in the political interests of the President.

The President directed or participated in efforts to conceal these activities. He had the files and logs of the F.B.I. wiretaps transferred to the White House, where they were concealed. He invoked a false national security justification and ordered the Justice Department not to investigate the Fielding break-in. He used his power to choose an F.B.I. director in a possible endeavor to prevent the revelation of both these matters in the Ellsberg trial. And he made deceptive and misleading public statements in an apparent effort to further this concealment.

The use of the powers of the office to obtain confidential information for the political benefit of the President was not limited to surveillance activities. In addition, there is evidence that the White House endeavored to misuse the Internal Revenue Service to obtain confidential tax return information on individuals and to accelerate or initiate I.R.S. investigations or audits of political critics or opponents of the President.

Concealment was also apparently involved in the Kleindienst nomination and appointment for the office of Attorney General. Kleindienst and Mitchell testified falsely in Kleindienst's confirmation hearings as to the President's role in the I.T.T. litigation. If the President knew of the testimony and its falsity, he failed to correct the record or to withdraw the Kleindienst nomination and publicly reiterated his confidence in Kleindienst's honesty. Such conduct would be an abuse of the President's appointment power and a deprivation of the Senate's right of advise and consent.

In the case of the 1971 milk price support decision, the President ordered that the price support be raised, despite an earlier decision that there was no statutory justification for doing so, for his own political gain—a consideration outside the authority granted by statute. There is evidence suggesting that political contributions by milk cooperatives may have been given with the intention of influencing this decision. If the President knew of this—and he has failed to comply with subpoenas for evidence bearing upon it — then his abuse of his discretion as chief executive might also involve bribery.

Finally, there is evidence that the President abused his office to obtain personal pecuniary benefit from expenditures on his properties at San Clemente and Key Biscayne. G.S.A. made expenditures for the President's personal benefit beyond its legal authority with the apparent knowledge and consent of the President.

The committee could conclude that these instances—and those disclosed by the evidence on Watergate and its cover-up—are part of a pattern of the use of the powers of the Presidency to serve the President's personal objectives, without regard to the legality or propriety of the conduct involved. The committee could conclude that this pattern constitutes a serious abuse of the office of President.

THE REFUSAL OF PRESIDENT NIXON TO COMPLY WITH SUBPOENAS OF THE COMMITTEE ON THE JUDICIARY

I.

The Committee's Subpoenas And The President's Responses

On Feb. 6, 1974, the House adopted H. Res. 803, directing the Committee on the Judiciary to investigate fully and completely whether sufficient grounds exist for the House to exercise its constitutional power to impeach Richard M. Nixon, President of the United States. That resolution specifically authorized the committee to compel the production by subpoena of all things it deemed necessary for the investigation.

A. EFFORTS OF COMMITTEE TO OBTAIN PERTINENT MATERIALS FROM WHITE HOUSE.

1. INTRODUCTION.

On Feb. 25, 1974, acting pursuant to the instructions of Chairman Rodino and Ranking Minority Member Hutchinson, John Doar, Special Counsel to the Committee, wrote to James D. St. Clair, Special Counsel to the President, requesting specified tape recordings, transcripts and other materials, including 19 tape recordings and certain other materials previously furnished by the President to the Watergate Special Prosecution Force.

Following the Feb. 25 letter a number of other letters were sent requesting tapes and other documents. Ultimately, the Committee on the Judiciary issued eight subpoenas to the President between April 11 and June 24, 1974. Those subpoenas required the production of: (1) the tape recordings of 147 conversations and doucments relating to those conversations; (2) a listing of Presidential meetings and telephone conversations (termed Presidential "daily diaries") for five specified periods; (3) documents from the White House files of specified former White House employes relating to the Watergate matter and the White House Special Investigations Unit (the "Plumbers"); and (4) copies of daily news summaries relating to the I.T.T. matter for a specified period in 1972 conaining Presidential notations.

In response to these letters and subpoenas, the President produced:

(1) 19 tape recordings and certain documents which had previously been supplied to the Special Prosecutor;

(2) edited White House transcripts of 32 subpoenaed conversations;
(3) edited White House transcripts of eight conversations not subpoenaed and of three public statements;
(4) selected notes of John Ehrlichman relating to the Fielding break-in and wiretaps, which were extensively edited;
(5) White House news summaries, without Presidential notations, for a period in 1972 relating to the Kleindienst hearings;
(6) On July 18, 1974, in the course of his counsel's oral statement, a two and one half page excerpt for the edited transcript of an hour and 24-minute meeting on March 22, 1973, between the President and Haldeman.

In addition to the above, the committee—when its staff was recording a conversation which took place on Sept. 15, 1972, to secure a better copy of the tape — also obtained as a result of an accident by White House personnel approximately 15 minutes of conversation on the date not previously supplied to the Special Prosecutor or to the committee. This additional conversation proved to be relevant to the committee's inquiry. Apart from this small segment obtained by accident, the committee has not received a single tape recording which was not in the possession of the Special Prosecutor. The committee has not received any of the 147 tape recordings which it has subpoenaed (98 of which relate to the Watergate matter): nor, except as specified above, has it received any of the documents or materials it has sought. As indicated, the bulk of the materials which the committee has received was not in response to its subpoenas, but stemmed from the fact that the Special Prosecutor received the same material as a result of public pressure following the firing of Archibald Cox.

2. THE SUBPOENAS.

On April 11, May 15, May 30 and June 24, 1974, after receiving detailed memoranda from its staff setting forth facts that demonstrated the need for the materials to be subpoenaed, the committee issued a total of eight subpoenas to the President. In each instance the subpoena was issued only after the President refused to produce voluntarily materials which had been requested by the committee. The staff memoranda setting forth the bases of the requests were provided to the Special Counsel to the President.

[a] The Four Watergate Subpoenas.

(i) April 11, 1974. The subpoena of April 11, 1974, required the production of all tapes, dictabelts, notes, memoranda and other things relating to 42 Presidential conversations in February, March and April, 1973. In a letter of April 4, 1974 to Mr. St. Clair, Mr. Doar explained that the committee believed that the conversations were likely to:

(1) bear upon the knowledge or lack of knowledge of, or action or inaction by the President and/or any of his senior Administration officials with respect to the investigation of the Watergate break-in by the Department of Justice, the Senate Select Committee, or any other legislative, judicial, executive or administrative body, including members of the White House staff;
(2) bear upon the President's knowledge or lack of knowledge of, or participation or lack of participation in, the acts of obstruction of justice and conspiracy to obstruct justice charged or otherwise referred to in the indictments returned on March 1 in the District Court for the District of Columbia in the case of United States v. Mitchell, et al.; and
(3) bear upon the President's knowledge or lack of knowledge of, or participation or lack of participation in, the acts charged or otherwise referred to in the informations or indictments returned in the District Court for the District of Columbia in the cases of United States v. Magruder, United States v. Dean, United States v. Chapin, and United States v. Ehrlichman, or other acts that may constitute illegal activities.

The committee discussed in open session the necessity and pertinency of the materials with respect to the President's knowledge or lack of knowledge and involvement or lack of involvement in Watergate. The subpoena was authorized by a vote of 33 to 3 and was properly issued and served. It had a return date of April 25, which was extended for five days at the request of the President.

The subpoenaed tape recordings included four conversations prior to March 21, 1973—the date on which the President has stated he originally learned of White House involvement in the Watergate cover-up. The first three conversations included: (1) a meeting on or about Feb. 20, 1973 at which Haldeman and the President discussed a possible government appointment for Jeb Magruder, who had perjured himself in the Watergate trial; (2) a conversation among the President, Haldeman and Ehrlichman on or about Feb. 27, 1973, at which they discussed the assignment of Dean to report Watergate matters directly to the President; and (3) a March 17, 1973, meeting between Dean and the President. The other subpoenaed tape recordings contained conversations of the President with Haldeman and Ehrlichman from April 14 to April 17, 1973; and of the President with Kleindienst and Petersen from April 15 April 17, 1973; and of the President to April 18, 1973—the four days immediately following the prosecutors' breakthrough in the Watergate case.

(ii) May 15, 1974. On May 15, after the inquiry staff's initial presentation had begun, the committee issued two additional subpoenas. Again this was done after public consideration of the necessity to obtain materials sought. The first subpoena, authorized by a vote of 37 to 1, covered tape recordings and other materials related to 11 conversations on April 4, June 20 and June 23, 1972, which the committee believed were likely to bear on the President's involvement or lack of involvement in the Watergate matter. The second covered the President's daily diaries for four time periods in 1972 and 1973; each of the time periods was separately voted upon by the committee. That portion of the subpoena covering the diaries from April-July, 1972, was authorized by a vote of 36 to 1; the portions for February-April, 1973, and October, 1973, by votes of 32 to 6; and the portion for July 12-July 31, 1973, by a vote of 29 to 9. The two subpoenas of May 15 were properly issued and served. They had a return date of May 22, 1974.

The 11 subpoenaed conversations were pertinent to the questions of whether or not the President had advance knowledge of the Liddy Plan, what the President was informed of on June 20, 1972, and the President's directive on June 23, 1972, to the C.I.A. in connection with the Watergate investigation. Six of the subpoenaed conversations occurred on June 20, 1972. The President had previously produced for the Special Prosecutor a tape of another June 20 conversation containing an 18-½ minute gap, which court-appointed experts have subsequently concluded resulted from five to nine manual erasures.

The four time periods reflected in the subpoenaed Presidential daily diaries related to (1) the period immediately preceding and following the break-in at DNC headquarters; (2) the period immediately preceding and following the March 21, 1973, meeting and the reconvening of the Watergate grand jury; (3) the period immediately preceding and following Butterfield's disclosure of the White House taping system; and (4) the period immediately preceding and following the President's dismissal of Special Prosecutor Cox.

(iii) May 30, 1974. The subpoena of May 30, which was authorized at a public meeting by a vote of 37 to 1, directed the production of tape recordings and other materials related to 45 conversations that might bear upon the President's involvement or lack of involvement in the Watergate matter. This subpoena also sought all papers prepared by, sent to, received by or at any time contained in the files of five former White House aides (Haldeman, Ehrlichman, Colson, Dean and Strachan) to the extent that they related to the Watergate matter. This subpoena was properly issued an dserved. It had a return date of June 10.

The 45 conversations, the recordings of which were sought by the May 30 subpoena, occurred between Nov. 15, 1972, and June 4, 1973. The initial presentation to the committee showed that there was a reasonable basis to conclude that the conversations might include, among others: Presidential discussions of clemency for Hunt; statements by Colson to the President about the Watergate cover-up in February, 1973; conversations in March, 1973, among the President, Dean, Colson, Haldeman and Ehrlichman; and discussions among the President, Haldeman, Ehrlichman or their attorneys during the period in April when Petersen was reporting Watergate investigative developments directly to the President.

The evidence also indicated that on April 25 and 26, 1973, Haldeman, at the President's request, listened to the March 21 tape, among others, and reported about it to the President in several meetings—one of which lasted six hours. The subpoenaed conversations included the meeting at which Haldeman reported to the President about the March 21 tape. The subpoenad conversations were relevant to the President's knowledge or lack of knowledge about Watergate prior to March 21, 1973, as well as the President's actions after that date.

Of the 98 conversations subpoenaed by the committee relating to the Watergate matter, 64 have been subpoenaed by the special prosecutor for the trial of United States v. Mitchell. Judge Sirica has ordered the President to produce the recordings of these conversations. That order has been appealed to the United States Supreme Court.

[b] The I.T.T., Dairy, I.R.S. and Domestic Surveillance Subpoenas.

On June 24, 1974, following the staff's initial presentation of evidence, the committee authorized the issuance of four subpoenas compelling the production of material related to the 1971 milk price support decision, the I.T.T. antitrust case, domestic surveillance, and allegedly improper use of the Internal Revenue Service. The first two of these subpoenas were authorized by votes of 34 to 4; the other two by voice vote. All were properly issued and served and had a return date of July 2.

The subpoena for dairy tape recordings and documents was designed to determine whether or not the President caused milk producers cooperatives to believe he would be influenced in raising the milk price support level in March, 1971, by campaign contributions or pledges. The subpoena relating to domestic surveillance ordered the production of tape recordings and documents that might show the President's knowledge or lack of knowledge of the Fielding break-in before March 17, 1973. An edited transcript of one of the conversations (April 19, 1973, between the President and Petersen) had been produced in United States v. Ehrlichman. The subpoena in the I.T.T. area was

designed to determine whether or not the President knew of the false testimony given by Kleindienst relating to the I.T.T. antitrust litigation during the hearings before the Senate Judiciary Committee on the nomination of Kleindienst to be Attorney General. The subpoena relating to the inquiry about misuse of the I.R.S. ordered the production of two tapes on Sept. 15, 1972, one of which Judge Sirica said involved discussions relating to use of the I.R.S.

B. THE PRESIDENT'S RESPONSE TO LETTERS AND SUBPOENAS.

1. RESPONSE TO FEB. 25, 1974 LETTER.

After the grand jury informed Judge Sirica on March 1, 1974, that it wished to make a submission to the House Judiciary Committee, Mr. St. Clair on March 6, 1974, announced in open court that President Nixon had agreed to supply to the committee those materials previously furnished to the special prosecutor.

Subsequently, between March 8 and March 15, 1974, the committee received those materials that had been furnished the prosecutors. This included the tape recordings of 10 Watergate-related conversations or portions of conversations on June 30, 1972, Sept. 15, 1972, Feb. 28, 1973, March 13, 1973, March 21, 1973 (two conversations) March 22, 1973, April 16, 1973 (two conversations) and June 4, 1973. Also included were tapes of Presidential recollections respecting conversations on June 20, 1972, and March 21, 1973, making a total of 12 Watergate-related conversations produced by the President.

The recordings of June 30, Sept. 15, March 13, 21 and 22 and the tapes of the two Presidential recollections had been surrendered pursuant to a grand jury subpoena obtained by Special Prosecutor Cox and sustained by the Court of Appeals in Nixon v. Sirica.

The tape recordings of two conversations between the President and Dean on April 16, 1973, had been submitted when the President was unable to deliver the tape of the conversation of April 15, 1973. The President announced following the Court of Appeals decision upholding Special Prosecutor Cox's subpoena that the April 15 conversation between the President and John Dean had not been recorded because the tape in the President's E.O.B. office allegedly ran out.

The tape recordings of two other

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conversations submitted to the committee in March, those on Feb. 28, 1973, and June 4, 1973, had been previously given by the President to Special Prosecutor Jaworski. The committee also received from the President logs and documentary materials previously supplied to the special prosecutor.

Each of the 12 tape recordings relating to the Watergate matter which the committee received from the President between March 8 and 15, 1974, wre already part of the grand jury submission announced on March 1, 1974. Thus, with respect to the Watergate matter, the committee did not receive from the President a single tape recording of a conversation which it had not been scheduled to receive and did receive on March 26, 1974 from the Grand Jury.

As will be seen, apart from these 12 Watergate-related conversations which the President delivered to the committee after the announcement of the existence of a grand jury submission, the committee to date has not received a single additional Watergate-related recording, despite the issuance of three subpoenas in this regard requesting 98 such recordings.

2. RESPONSE TO APRIL 11, 1974 SUBPOENA.

In response to the Committee's first subpoena—which was issued on April 11, 1974—the President on April 29, 1974, appeared on nationwide television. He said that he would submit to the committee, on the next day, edited transcripts of subpoenaed conversations that had been taped, as well as transcripts of some taped conversations that had not been subpoenaed. The President also announced that these transcripts, which had been prepared at the White House, would be made public. The next day these transcripts were delivered to the committee and released to the public; the committee received no tapes, Dictabelts, memorandums, or other subpoenaed documents.

With respect to the three earliest subpoenaed conversations, the President responded that a search of the tapes failed to disclose either the Feb. 20, 1973, or Feb. 27, 1973, conversations. With respect to the March 17, 1973, conversation, the President produced a four-page edited transcript relating only to a discussion of the Fielding break-in. On June 4, 1973, the President listened to the March 17, 1973, recording. In a recording of a conversation on June 4, 1973, the President talked to Ziegler about Watergate-related matters that the President had just heard on the March 17 tape. The President recalled that on March 17, after hearing that Magruder had put the heat on and Sloan had started blaming Haldeman, the President stated, in effect, "We've got to cut that off. We can't have that go to Haldeman." On May 21, 1974, the chairman directed the committee's special counsel to discuss with the President's special counsel the omission of this material in the edited transcript of March 17, 1973. The President has, to date, declined to produce the other portions of the conversation.

Of the other 39 subpoenaed conversations, the President reported that five were not recorded because the tape in the E.O.B. office ran out on April 15, 1973; that four telephone conversations were not recorded because they were made on a residence telephone; and that anoter telephone call on April 18, 1973. to Henry Petersen (during which the President alluded to the existence of a tape recording relating to his allegedy unrecorded April 15, 1973, conversation with Dean, and in the course of which Petersen told the President about the Fielding break-in) had been made from Camp David and was not recorded.

The President's submission included seven other transcripts, three of which did not involve the President. None of the volunteered transcripts related to conversations prior to March 21, 1973. Specifically, the volunteered transcripts did not relate to the following conversations relevant and necessary to a determination of the President's direction or lack of direction in the Watergate cover-up: (1) the conversations on June 20, 1972, with Haldeman and Colson; (2) the conversations on June 23, 1972, with Haldeman relating to the President's directions to Haldeman to meet with the C.I.A.; (3) conversations with Colson on Jan. 5, 1973, Feb. 13 and 14, 1973, and (4) of the President with Dean, Colson, Haldeman and Ehrlichman prior to March 21, 1973; (5) the long conversations with Haldeman on April 25 and April 26 after Haldeman had listened to the tape recordings; and (6) the conversation between the President and Henry Petersen on April 25 immediately after the President had talked with his chief of staff, Haldeman, about what Haldeman had heard on the tape recordings. The President nonetheless stated on May 22, 1974, that after the production of the edited transcripts, "the committee has the full story of Watergate, in so far as it relates to Presidential knowledge and Presidential actions."

Accompanying the submission of edited White House transcripts was an unsigned memorandum setting forth the President's interpretation of the contents of the transcripts. The memorandum said that the committee had called for the production of tapes and other materials relating to 42 Presidential conversations; and claimed that, with respect to all but three of these conversations, the subpoena had been issued "without regard to the subject matter, or matters, dealt with in these conversations." The memorandum stated that the President considered the subpoena "unwarranted," and that he would not permit what he termed "unlimited access to Presidential conversations and documents."

The memorandum claimed that the President "does recognize that the House Committee on the Judiciary has constitutional responsibilities to examine fully into his conduct." The memorandum said the President was providing transcripts "of all or portions of the subpoenaed conversations that were recorded and a number of additional nonsubpoenaed conversations that clearly show what knowledge the President had of an alleged cover-up of the Watergate break-in and what actions he took when he was informed of the cover-up."

The President invited the chairman and ranking minority member of the committee "to review the subpoenaed tapes to satisfy themselves that a full and complete disclosure of the pertinent content of these tapes had, indeed, been made." The committee declined this offer.

Chairman Rodino explained that the subpoena issued by the committee required materials covered by it to be delivered to the committee in order that they be available for the committee's deliberations. He expained that the procedures followed by the committee must give all members—each of whom has to exercise his or her personal judgment on this matter of enormous importance to the nation—a full and fair opportunity to judge all the evidence for themselves.

It was therefore necessary that the committee not depart from the ordinary and accepted process in the way the President suggester, or in any other manner that might raise questions about the thoroughness, fairness and objectivity of the committee's work.

Accordingly, on May 1, 1974, the committee advised the President by a letter, which was approved by a vote of 20 to 18, that he had not complied with the subpoena of April 11.

Both the Committee's special counsel and special counsel to the minority have repeatedly cautioned members of the Judiciary Committee to consider the White House-edited transcripts skeptically. The staff, by comparing those edited transcripts for which the Committee previously had recordings with the Committee's transcripts, isolated seven categories of inaccuracies: (1) misstatements, (2) omissions, (3) additions, (4) paraphrasing, (5) misassignment of conversations to other speakers, (6) selection of relevant portions and (7) unintelligibles. Examples of these inaccuracies appeared in the "Comparison of Passages" of Committee transcripts of eight recorded conversations and the White House-edited transcripts, released on July 9, 1974.

In addition, throughout the edited transcripts there were references to "material unrelated to Presidential action deleted." Mr. Doar and Mr. Jenner advised the Committee that they did not know of any precedent for that kind of judgment with respect to the deletion or omission of material. They added that they did not know what those words meant, nor did they understand what standards were being used in deleting material.

3. RESPONSE TO SEVEN OTHER SUBPOENAS.

Subsequent to his televised response to the April 11, 1974, subpoena, the President has virtually ignored the seven other subpoenas issued by the Committee on the Judiciary in its exercise

of the House's sole power of impeachment.

For example, the President failed to comply with the two subpoenas of May 15. On May 30, following the return date of those subpoenas, the committee advised the President by letter of the grave consequences of his noncompliance. The letter, approved by a vote of 28 to 10, said that noncompliance might be considered independent grounds for impeachment, and that the committee would be free to consider whether noncompliance might warrant the drawing of adverse inferences concerning the substance of the materials not disclosed.

On June 9, 1974, the President wrote the chairman a letter in which the President invoked "executive privilege" as his justification for the refusal to comply with the subpoenas of May 15. "My refusal to comply with further subpoenas with respect to Watergate is based, essentially, on two considerations," the President wrote. "First, preserving the principle of separation of powers—and of the executive as a co-equal branch—requires that the executive, no less than the legislative or judicial branches, must be immune from unlimited search and seizure by the other co-equal branches." And the President continued, "Second, the voluminous body of materials that the committee already has—and which I have voluntarily provided, partly in response to Committee requests and partly in an effort to round out the record—does give the full story of Watergate, insofar as it relates to Presidential knowledge and Presidential actions."

The President's letter of June 9th went on to argue that an adverse inference could not properly be drawn "from my assertion of executive privilege with regard to these additional materials," contending that to draw such an inference would fly in the face of "established law on the assertion of valid claims of privilege." Otherwise, the President claimed, "the privilege itself is undermined, and the separation of powers nullified."

Accompanying the President's letter of June 9th was a short letter dated June 10th from the President's counsel, stating that the President declined to comply with the subsequent subpoena of May 30 for the reasons set forth in the June 9th letter concerning the subpoena of May 15.

The four subpoenas issued by the committee on June 24 had a return date of July 2, 1974. On July 12, 1974 the special counsel to the President informed the chairman that the President declined to produce either the tapes of the subpoenaed conversations or the subpoenaed daily diaries of the President. The President agreed to produce copies of the White House news summaries relating to the Kleindienst confirmation hearings without the President's notes and copies of some of Ehrlichman's subpoenaed notes relating to the Fielding break-in and the 1969-71 wiretaps. The Xeroxed copies of Ehrlichman's notes given to the Committee were edited so as to delete significant portions that the White House had produced to the court in United States v. Ehrlichman. On July 18, 1974 Mr. St. Clair advised the committee this was done in error.

II

The Power of the House in an Impeachment Inquiry

The power of impeachment is an extraordinary remedy to be used as "an essential check in the hands of [the legislature] upon the encroachments of the executive." As a power conferred by the Constitution, it is not to be construed in a manner that would cripple its execution or "render it unequal to the object for which it is declared to be competent." It is to be interpreted so that "it will attain its just end and achieve its manifest purpose." Of necessity this must include the power— indeed, the duty—to inquiry—to find out the truth.

As early as 1796, it was stated on the floor of the House that the power of impeachment "certainly implied a right to inspect every paper and transaction in any department, otherwise the power of impeachment could never be exercised with any effect." The impeachment power is "the most undebatable power from which to deduce an implied investigatory power." The "true spirit" of impeachment, Alexander Hamilton wrote in The Federalist No. 65, is that it is "designed as a method of national inquest into the conduct of public men," initiated by the representatives of the people.

Throughout all of our history this power of inquiry has been recognized as essential to the impeachment power. Before the current inquiry, 69 officials have been the subject of impeachment investigations. With one possible exception, in which the official invoked the privilege against self-incrimination, none of them challenged the power of the committee conducting the investigation to compel the production of evidence it deemed necessary.

In 1867, the Committee on the Judiciary conducted the initial inquiry concerning the impeachment of President Andrew Johnson. Hearings were held over a period of 11 months. Records were requested from a number of executive departments and from the executive mansion itself; there is no evidence of any failure to comply with these requests, nor of any objection to them by President Johnson. Cabinet officers and Presidential aides were questioned in detail about meetings and conversations with the President that led to decisions about the prosecution of Jefferson Davis, Presidential pardons, the issuance of executive orders, the conduct of Reconstruction and the vetoing of legislation.

Only one witness in the hearings, Jeremiah Black, an adviser to President Johnson who later served as one of his counsel in his impeachment trial, protested against a question relating to private conversations that took place between him and the President in the preparation of a veto message. Black recognized, however, that he was bound to answer the question if the committee pressed it, and he acknowledged that "a witness sworn to testify before any tribunal declares he ought to answer; that he is himself not the judge of what he ought to answer and what he ought not." After deliberation, the committee required Black to answer, and he did so. Black and other witnesses answered detailed questions on the opinions of the President and advice expressed to him in the formulation of Presidential decisions.

Other Presidents, beginning with George Washington, have recognized the power of the House to compel the production of evidence in the custody of the executive branch in an impeachment investigation. The clearest acknowledgment of the reach of this investigative power was made in 1846 by President James K. Polk. Polk, regarded by historians as a strong President, protested a legislative investigation being conducted by a House committee. In his message to the House, Polk "cheerfully admitted" the right of the House to investigate the conduct of all government officers with a view to the exercise of its impeachment power. "In such a case," he wrote, "the safety of the Republic would be the surpreme law, and the power of the House, in pursuit of this object would penetrate into the most secret recesses of the Executive Departments. It could command the attendance of any and every agent of the Government, and compel them to produce all papers, public or private, official or unofficial, and to testify on oath to all facts, within their knowledge."

III

Analysis of the President's Asserted Reasons for Noncompliance With the Subpoenas

A. RELEVANCE OR NEED.

In his letter of June 9 to Chairman Rodino, the President stated that one of the considerations on which he based his refusal to comply with subpoenas was that "the voluminous body of materials" that the committee already has gives "the full story of Watergate, insofar as it relates to Presidential knowledge and Presidential actions." The suggestion is either that the subpoenaed material is not needed because it duplicates what the committee already has or that it is not relevant. This asserted justification for noncompliance is invalid because the material is both relevant and needed. What is more important, it is for this committee, not the President, to decide what is needed and what is relevant.

In an investigatory or adjudicative proceeding, the judge of the need or relevancy of subpoenaed evidence is the requesting tribunal, not the subject of the investigation. The subject is not permitted to determine the relevancy or the need for particular evidence. This is clearly established in judicial proceedings. As Dean Wigmore stated:

> "The question of relevancy is never one for the witness to concern himself with . . . It is his duty to bring what the Court requires; and the Court can then to its own satisfaction determine by inspection whether the documents produced are irrelevant."

The same rule must apply in an impeachment inquiry.

It should be emphasized that there is no requirement that relevancy and need be established to a certitude before the issuance of a subpoena. Investigative bodies cannot be required to know all the facts before seeking evidence to determine them. What is required is a reasonable belief that the subpoenaed material is relevant and needed for the inquiry. The Supreme Court has held that inquiry cannot "be limited . . . by forecasts of the probable result of the investigation." Even administrative agencies may determine their own investigative jurisdiction, and they may demand the production of documents that permit that determination to be made.

Each subpoena to the President was justified by a detailed memorandum describing the information that led the staff to request the Committee to authorize the subpoena. These memoranda show how limited and tailored the Committee's subpoenas have been and how necessary the material sought is to its inquiry. The President has asserted that the edited transcripts he provided in response to the first Committee subpoena gave the "full story" of Watergate. They do not, however, constitute the best evidence even of the conversations they cover. They were prepared by members of the President's staff, and the President himself made the final decisions as to what to excise from the transcripts. Moreover, the committee cannot be bound by the President's determination as to whether subpoenaed material is "duplicative" of what the committee already has. The subject of an inquiry cannot be the judge of what is needed to con-

duct it, for, as James Madison wrote, "his interest would certainly bias his judgment."

As described above, the President has refused to provide the committee with any Watergate-related materials predating March 21, 1973—the date on which the President claims he first learned of Watergate. There are only two minor exceptions: (1) an edited transcript of a telephone conversation with Dean on the evening of March 20, and (2) a four-page edited transcript from a conversation that lasted 45 minutes between the President and Dean on March 17. Every pre-March 21 tape in the possession of the committee—June 20, 1972, June 30, 1972, Sept. 15, 1972, Feb. 28, 1973, and March 13, 1973—was previously provided to the special prosecutor.

The President has voluntarily given the committee transcripts of seven conversations it did not subpoena (only four of which involved the President), all in the period from March 28 to April 30, 1973 to complete, according to the President, the record. Within that same period, he has refused to provide his April 25 and 26 conversations with Haldeman just after Haldeman had listened to the March 21 tape of the President's conversation with Dean. Thus, as a factual matter, his claim to have provided "the full story of Watergate" —much less materials the committee deems necessary for other aspects of its inquiry—is insupportable.

Moreover, as has been clear above, all of the 19 tape recordings and the bulk of the documentary material which the committee has received from the President has not been in response to the subpoenas issued as part of the committee's impeachment inquiry. Rather, these recordings and materials were supplied to the committee only after they had been delivered to the special prosecutor before this committee's inquiry ever began, in response to grand jury subpoenas and court orders, and then only after a public outcry following the firing of Special Prosecutor Cox. The response of the President to this committee's inquiry—the ignoring of its subpoenas for recordings and other documents, the production only of materials previously given to another entity, for other purposes, under other circumstances—does not constitute a reasoned effort to respond to the powers granted to the House of Representatives under the Constitution. The conclusion cannot be avoided that the committee has been refused the evidence which it has sought to conduct a full and complete inquiry as authorized and directed by the House of Representatives.

B. PRESIDENTIAL CLAIM OF EXECUTIVE PRIVILEGE

In refusing to comply with the subpoenas the President invoked what he denominated as executive privilege. It is for this committee and the House, not the President, to decide the validity of this claim of privilege. Wholly apart from any questions of waiver, it is submitted that there can be no place for executive privilege in an impeachment inquiry.

1. SEPARATION OF POWERS.

The claim of executive privilege was in part based on a view that it was the President's duty to "preserve the principle of separation of powers." But separation of powers is simply inapplicable to an impeachment inquiry. As Hamilton said in The Federalist No. 66, the "true meaning" of separation of powers is "entirely compatible with a partial intermixture" of departments for special purposes. This partial intermixture, he wrote, "is even, in some cases, not only proper but necessary to the mutual defense of the several members of the government against each other." According to Hamilton, the "powers relating to impeachment" are such a case—"an essential check" in the hands of the legislature "upon the encroachments of the executive."

The records of the Constitutional Convention establish that the framers intended impeachment to be an exception to separation of powers. Impeachment was considered by the framers almost exclusively in terms of the removal of the executive; it was written into the Constitution despite repeated arguments by its opponents that it would make the President overly dependent on Congress. Charles Pinckney asserted in the major debate on impeachment of the executive that, if the legislature had the power, they would hold impeachment "as a rod over the Executive and by that means effectually destroy his independence." Rufus King argued that impeachment by the legislature violated the separation of powers and would be "destructive of [the executive's] independence and of the principles of the Constitution." These arguments were decisively rejected by the Convention, which voted eight states to two to make the executive impeachable by the legislature.

2. THE NEED FOR CONFIDENTIALITY.

The President also based his claim of executive privilege on an asserted need to preserve confidentiality in the executive. The President argued that if the House may compel the production in an impeachment inquiry of evidence of communications between the President and his advisers, the ability of Presidents to obtain candid advise in the future would be impaired.

This is essentially a contention that the need for free and unfettered communications between a President and his advisers outweighs the need to determine whether there has been impeachable wrong-doing by the incumbent President. But the balance seems to have been struck, and struck the other way — in favor of the power of inquiry — when the impeachment provision was written into the Constitution.

Moreover, the President's argument exaggerates the likelihood of an impeachment inquiry and thus the impairment of confidentiality. Only two Presidents (including President Nixon) out of 37 have ever been the subject of impeachment investigations. It can scarcely be contended that the far-reaching inquiry into the deliberations between President Johnson and his aides resulted in any impediment of the communications between Presidents and their advisers. There is no more reason to think that this inquiry will have that effect.

3. WHO SHOULD DECIDE WHETHER THESE CLAIMS OF PRIVILEGE ARE VALID?

There is always a risk that the power of inquiry might be abused in the future. But the question is who is to draw the line. The sole power of impeachment is confided to the House; thus the Constitution commits the power to draw the line to the House. The power is subject to review by the Senate when it must decide whether to remove the officer impeached. Both are accountable to the people. As Chief Justice Marshall wrote:

> The wisdom and discretion of Congress, their identity with the people, and the inflence which their constitutents possess at elections, are, in this, as in many other instances . . . the sole restraints on which [the people] have relied to secure [them] from . . . abuse [of a constitutional power]. They are the restraints on which the people must often rely solely, in all representative governments.

To permit the President, the subject of the inquiry, to decide upon his own claim of privilege is to violate Lord Coke's maxim — "no man shall be the judge in his own cause" — and it would enable the President to put himself beyond the impeachment power. To rely upon the courts to resolve these questions of privilege would be inconsistent with the constitutional commitment to the House of the "sole power of impeachment."

Although it is for the House, in the first instance, to decide the question of the vallidity of these claims of privilege, there is no need to insist upon a formal finding of contempt by the entire House. A finding of contempt adds nothing to the impeachment process. The President has made clear his intention to continue with his actions of noncompliance. Willful default has occurred, and the committee has been advised of the President's rationale. The House can judge the validity of this in voting on a resolution of impeachment. The President's procedural rights are fully preserved by his opportunity for trial in the Senate.

IV
The President's Refusal to Comply With the Committee's Subpoenas as Grounds for Impeachment

In only one instance has a person under investigation for possible impeachment refused to comply with Congressional demands for information. In 1879, the committee charged with the duty of inquiry reported articles of impeachment against George Seward, former consul general in Shanghai. One article included a charge that Seward had concealed and refused to deliver certain records to the committee. This suggests that the refusal to comply has been treated as grounds for impeachment. The precedential value is limited because the House adjourned before voting on the articles. Moreover, the Judiciary Committee, which had considered the question of Seward's refusal to comply with the demands of the committee, concluded that he had validly claimed his Fifth Amendment privilege against self-incrimination and thus refused to recommend a contempt citation.

Apart from precedent, however, the refusal to comply with impeachment inquiry subpoenas may well be considered as grounds for impeachment. Thus, the President's refusal likely violates two Federal statutes— 2 U.S.C. § 192, making willful noncompliance with a Congressional committee subpoena a misdemeanor and 18 U.S.C. § 1505, making it a felony to obstruct a lawful Congressional inquiry.

But much more significant than the possible violation of a criminal statute is the conclusion that the President's noncompliance with the committee's subpoenas is a usurpation of the power of the House of Representatives and a serious breach of his duty to "preserve, protect and defend the Constitution of the United States." In refusing to comply with limited, narrowly drawn subpoenas, which seek only materials necessary to conduct a full and complete inquiry into the existence of possible impeachable offenses, the President has undermined the ability of the House to act as the "Grand Inquest of the Nation."

His actions threaten the integrity of the impeachment process itself; they would render nugatory the power and duty of the legislature, as the representative of the people, to act as the ultimate check on Presidential conduct For this most fundamental reason the President's refusal to comply with the committee's subpoenas is itself grounds for impeachment.

WILLFUL TAX EVASION

I.

On Dec. 30, 1969, President Nixon signed the Tax Reform Act of 1969 into law. That act included a provision eliminating the tax deduction for contributions of collections of private papers made to the government or to charitable organizations after July 25, 1969.

On April 10, 1970 the President (an attorney who in the past had engaged in tax practice) signed his income tax return for 1969, claiming a deduction for the donation to the National Archives of pre-Presidential personal papers allegedly worth $576,000. The President and his attorney Frank DeMarco went over the return page by page and discussed the tax consequences of the gift of papers deduction. An appraisal valuing the donated papers at that amount and a sheet describing the gift were attached to the return. These documents, wich constitute part of the return signed by the President, assert that the gift had been made on March 27, 1969.

The Internal Revenue Service has disallowed this deduction because it found that, as a matter of fact, the gift of papers was not made on or before July 25, 1969. While the papers which constituted the gift were in the custody of the archives before July 25, they were at that time merely an unsegregated part of a much larger mass of pre-Presidential papers. This large group of papers had been transferred on March 26 or 27, 1969, to the archives at its request for purposes of sorting and storage.

Prior to July 25, 1969 no one other than archives personnel had viewed the papers at the Archives. They had not been appraised, nor as of that date, had anyone made any determination as to which of these papers would constitute papers making the 1969 gift. The selection was begun only in November, 1969; it was completed by archives personnel in March, 1970.

There can be no doubt that the President knew that the Tax Reform Act required that, for the claim of a deduction to be valid, a gift must be completed by July 25, 1969. It is also clear that the President knew that his return indicated that the gift had been made on March 27, 1969. The question which remains is whether the President knew that the gift had not been made on that date.

II.

On the basis of its investigation, the I.R.S. concluded that the President was negligent in the preparation of his tax returns and assessed a negligence penalty of 5 per cent. The I.R.S. did not assess a civil penalty for fraud. For several reasons, however, this conclusion by the I.R.S. should not be considered determinative of the factual issue before the committee. First, of course, the committee must reach its own independent conclusion; its cannot be bound by the conclusions of others. Second, the I.R.S itself acknowledges that its investigation was incomplete. The I.R.S. had no direct contact with the President—as it would have with an ordinary taxpayer whose return was being investigated. When the I.R.S. considered assessment of a penalty, it had not interviewed one key witnes, John Ehrlichman. Other witnesses had told inconsistent stories. The only memorandum in the files of the I.R.S. which concerns the question of assessing a fraud penalty in the President's case is deficient. It accepts at face value self-serving testimony by several witnesses. It contains material errors.

The staff of the Joint Committee on Internal Revenue Taxation, which also concluded that the gift of papers had not been made by July 25, 1969, refused to draw any conclusions about whether the President had committed fraud. The staff report said that it did not address the question of fraud (or the question of negligence) on the part of the President because it might be inappropriate, in view of the impeachment inquiry.

III.

To be found guilty of criminal tax fraud, a taxpayer must have acted willfully to evade taxes. Willfulness in this context is construed to require an act that is "intentional or knowing or voluntary, as distinguished from accidental." While the staff believes that the applicable standard for the committee is not whether the President's conduct violated the criminal law, mere mistake or negligence by the President in filing false tax returns would clearly not provide grounds for impeachment. Therefore, the committee may want to consider the willfulness standard in deciding whether the President's tax deduction for the gift of papers constitutes ground for impeachment.

The question of willfulness in this case turns on whether the President knew that no gift had been made before July 26, 1969. This knowledge need not be proved by direct testimony or other proof of the President's state of mind; it may be inferred from all the events and circumstances surrounding the making of the gift and the preparation and execution of the tax return.

It is most unlikely that the President would have been unaware of the details of a charitable contribution which involved over $500,000. At the end of 1968, the President made a much smaller gift to the archives—$80,000 worth of his papers—and he was deeply involved in that gift. He discussed the deduction with his attorneys, and was briefed on the initiatives his attorneys were taking to deliver the papers to the government and the contents of alternative deeds of gift.

After the receipt of a memorandum and a detailed discussion with his attorney, the President personally, in late December, 1968, signed a deed conveying papers worth approximately $80,000 to the United States. For the gift alleged to be made in 1969, however, of over $576,000 worth of papers. the President did not sign a deed of gift; it was signed by Edward Morgan, a White House attorney. Morgan had no written or oral power of attorney from the President, and never before or after executed a document of such importance in the President's name.

The deed signed by Morgan was delivered to the archives in April, 1970. It was dated March 27, 1969, which

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precedes the July 25, 1969 cut-off date, and the notarization by the President's tax attorney, Frank DeMarco, stated that the deed was executed on April 21, 1969.

In fact, as previously indicated, the selection of the papers constituting the $576,000 gift was not completed until March 1970, and the deed ultimately delivered to the archives was itself not executed until April 10, 1970.

The claim of DeMarco and Morgan that the April 10, 1970 deed was a "re-execution" of a deed signed on April 21, 1969 has not been accepted by the I.R.S. or the Joint Committee. Herbert Kalmbach, who was with Morgan and DeMarco on April 21, 1969, has no recollection of seeing a deed of gift of papers executed on that date or of any discussion respecting a gift of papers or a deed. No deed executed in 1969 has ever been produced.

The President's attorneys have claimed that, in late February, 1969, the President told John Ehrlichman that he intended to make a bulk gift of papers during that year. They did not claim, however, that the President told Ehrlichman that such a gift was to be made at once, or at any certain time before the end of the year, or, more important, before July 26, 1969. Nor was there any indication that the President was notified before July 26, 1969, of the delivery of the gift.

If the President had expressed the wish in February that the completed gift be made promptly, he presumably would have executed the appropriate papers at the time of the transfer, or at least have been notified of the delivery. In fact, as has been noted, the papers were transferred to the archives on March 26-27, 1969, not on the initiative of the President or his staff, but at the request of the archives personnel.

On February 6, 1969, John Ehrlichman wrote a memorandum to the President on the subject of "Charitable Contributions and Deductions." Ehrlichman recited the 1968 gift of papers, and suggested that the President could continue to obtain the maximum charitable deduction of 30 per cent of his adjusted gross income by first contributing to charities proceeds from the sale of the President's writings in an amount equal to 20 per cent of his adjusted gross income. With respect to "the remaining 10 per cent," Ehrlichman's memorandum noted that it would "be made up of a gift of your papers to the United States. In this way, we contemplate keeping the papers as a continuing reserve which we can use from now on to supplement other gifts to add up to the 30 per cent maximum."

There is a notation on the memorandum in the President's handwriting, which states "(1) good (2) Let me know what we can do on the foundation idea—."

There is no reference in the Feb. 6 memorandum to making a gift of papers in the year 1969 in an amount which would be sufficient to constitute the President's entire 30 per cent charitable deduction for 1969 and five succeeding years.

On June 16, 1969 Ehrlichman, in a memorandum to Morgan, conveyed a number of the President's decisions and concerns respecting his income taxes. An example of the extent to which the President was concerned with the details of his tax returns is represented by the following statement in Ehrlichman's memorandum: "He wants to be sure that his business deductions include all allowable items. For instance, wedding gifts to Congressmen's daughters, flowers at funeral, etc. He has in mind that there is some kind of a $25 limitation on such expenses." With respect to charitable deductions the following was noted: "Will you please have someone carefully check his salary withholding to see if it takes into account the fact that he will be making a full 30 per cent charitable deduction." than three months earlier a gift of papers in excess of $500,000 had already been made.

It was not until shortly after Nov. 7, 1969 that the President was given an appraisal respecting the papers sent to the Archives in March, 1969. On Nov. 7 Newman, after viewing the papers at the Archives for the first time on Nov. 3, wrote to the President that he estimated the value of the entire collection of papers and other items at $2,012,000.

According to Newman, at a White House reception a week later, the President expressed to Newman his surprise at the high valuation.

There is no evidence that in February or March, 1969, anyone, including the President or his advisers, could have foreseen the July 25 cut-off date for the deduction of personal papers as a charitable contribution. Absent knowledge of such a cut-off date, it would appear to be contrary to rational tax planning to make so early in the year a charitable contribution in an amount so large as to eliminate the possibility

of making deductible charitable contributions not only for that year, but for the five following years. This is especially true since, as indicated, the President on or about Feb. 6, 1969 endorsed the proposal to have two-thirds of his maximum 30 per cent charitable deduction come from contributing to charities proceeds from the sales of his writings and only one-third from annual gifts of papers.

The fact that no one could have foreseen in Februray or March, 1969, a July 25 cut-off date is borne out by the chronology of the 1969 tax reform legislation. The tax reform act which the President sent to Congress on April 21, 1969, did not include any provisions affecting charitable deductions for gifts of papers. The House Ways and Means Committee did not announce until May 27, 1969, that it was even considering the elimination of the deduction for such gifts. On July 25, 1969, the Ways and Means Committee announced it had decided to recommend this action to the House. The bill thereafter reported by the committee on Aug. 2, and passed by the House on Aug. 7, would have continued to permit the deduction to be taken for gifts made until the end of 1969. On Nov. 21, the Senate Finance Committee reported out a provisison with the retroactive cut-off date of Dec. 31, 1968. This was the first indication that an individual might not have until the end of 1969 to make a final gift of papers. The bill passed the Senate on Dec. 11, with a Dec. 31, 1968 cut-off date.

Until December, 1969, when the conflict between the Senate and House bills was settled in conference, there was no reason to have completed early in the year any contributions for 1969. If the House date prevailed, a portion of the papers could be donated to the archives just before the end of the year, as the President had done in 1968. If the Senate date prevailed, the President had no opportunity at all to make a deductible contribution in 1969.

The conference committee, however, resolved the conflict between the House and Senate bills by selecting the retroactive date of July 25, 1969. A deduction for a gift of papers was therefore possible for 1969, but only if the President had made the gift by July 25. Having a large group of papers physically present at the archives before the cut-off date provided a basis for claiming that a gift had been made.

However, because only a portion of the papers was to be contributed, and restrictions imposed as to who could examine them, a deed designating the specific papers which constituted the gift, and specifying the restrictions imposed, was required. As indicated, a deed executed in 1970, but dated a year earlier, became that instrument and it was signed by a deputy counsel to the President.

IV

The willful evasion of taxes by a President would be conduct incompatible with his duties of office, which obligate him faithfully to execute the laws. A violation of law in the context of the tax system, which relies so heavily on the basic honesty of citizens in dealing with the Government, would be particularly serious on the part of the President also if it entailed an abuse of the power and prestige of his office. As chief executive, he might assume that his tax returns were not subject to the same scrutiny as those of other taxpayers.

It was unlikely, for example, that the archives would question a President as to the date of his gift. Although documents show that Archives employes thought that no gift was made in 1969, the archives raised no question when the deed dated a year earlier was delivered in 1970.

In May, 1973, when the President's tax returns for 1971 and 1972 were selected for audit by an I.R.S. computer, agents were shown a copy of Newman's appraisal, which evaluated the papers as of March 27, 1969. The agents were satisfied without further inquiry. They did not ask whether the gift itself was made on that date; they did not ask to see the deed, as they would have done with any ordinary taxpayer, who did not have the power and prestige of the President.

Only after questions about the legitimacy of the deduction were raised in the press, did the Internal Revenue Service or the National Archives begin to re-examine their earlier acceptance of the President's claim. And only after the President learned that the I.R.S. was going to reaudit his returns did he request the Joint Committee on Internal Revenue Taxation to examine his deduction for the gift of papers.

Archives personnel discovered that the deed of gift was not signed when it was purported to be signed. After this fact and others were disclosed, DeMarco, Morgan and Newman began revising stories which they had been telling for several months. When the Internal Revenue Service began investigating the deduction for the gifts of papers, the accounts of actions by DeMarco, Morgan and Newman, which had previously meshed with one another, began to differ. Even then, though substantial questions had arisen about the the President's own involvement in the deduction, the I.R.S. made no attempt to contact the President directly. When the staff of the joint committee submitted written questions to the President with respect to the gift of papers and other matters, he failed to respond.

Considering all the circumstances surrounding the alleged gift of papers and its inclusion as a deduction on the President's 1969 return, including the lack of a satisfactory response by the taxpayer, it was the judgment of Fred Folsom, a consultant to the committee (who for 24 years was an attorney in the Criminal Section of the Justice Department's Tax Division and chief of that section for 12 years) that in this case, "the case of an ordinary taxpayer, on the facts as we know them in this instance, the case would be referred out for presentation to a grand jury for prosecution."